Supreme Court, U.S.
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NO. 99-____

In The
Supreme Court of the United States

READING & BATES CORPORATION and
READING & BATES DRILLING CO.,
Petitioners,

v.

HANS-HENNING STIER,
Respondent

On Petition For A Writ of Certiorari to the Supreme Court of Texas

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Section 688(b) of the Jones Act applies to persons injured while engaged in offshore drilling activities in the territorial waters or the waters overlaying the continental shelf of a nation other than the United States who were not citizens or permanent resident aliens of the United States at the time of the incident ("foreign offshore drilling workers") and who have a remedy for their injuries under the law of the nation where the incident occurred or the nation of their citizenship or residency. 46 App. U.S.C.A. § 688(b) (West Supp. 1989). Section 688(b) provides, in relevant part, that "[n]o action may be maintained under [the Jones Act] or under any other maritime law of the United States for maintenance and cure or for damages for the injury or death of [such foreign offshore drilling workers]."

Does Section 688(b) of the Jones Act preclude or preempt foreign offshore drilling workers from maintaining "foreign law" claims in the state courts of the United States?

PARTIES TO THE PROCEEDINGS BELOW

The parties are as listed in the caption. Petitioners are Reading & Bates Corporation and Reading & Bates Drilling Co. Respondent is Hans-Henning Stier.

Petitioner Reading & Bates Drilling Co., which is now known as R & B Falcon Drilling Co., is wholly owned by Petitioner Reading & Bates Corporation. Reading & Bates Corporation, which is now known as R & B Falcon Drilling (International & Deepwater) Inc., is wholly owned by R & B Falcon Corporation, a publicly traded company.

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PETITION FOR WRIT OF CERTIORARI

Petitioners Reading & Bates Corporation and Reading & Bates Drilling Co. petition for a writ of certiorari to review that portion of the judgment of the Supreme Court of Texas in this case that held that the "Trinidad-law claims" of Respondent Hans-Henning Stier were not precluded or preempted by Section 688(b) of the Jones Act.

OPINIONS BELOW

The opinion of the Supreme Court of Texas, reported at 992 S.W.2d 423, is reprinted at App. 1-32. The order of the Supreme Court of Texas overruling Petitioners' motion for rehearing is reprinted at App. 41. The opinion of the Court of Appeals for the Fourteenth District of Texas is scheduled to be published but has not been published. A copy of the unpublished opinion, which may be found at 1999 WL 490625, is reprinted at App. 33-38. A copy of the judgment of the 80th Judicial District Court of Harris County, Texas, signed October 27, 1994, is reprinted at App. 39-40.

JURISDICTION

The decision of the Supreme Court of Texas was issued on April 8, 1999. Rehearing of the decision was overruled by the Supreme Court of Texas on July 1, 1999. This Court has jurisdiction to grant a writ of certiorari under 28 U.S.C. § 1257(a).

STATUTES INVOLVED

The statute involved in this case is 46 U.S.C. § 688(b), which is a part of the federal statute that extends to seaman the rights and remedies under FELA and is more commonly referred to as the "Jones Act." Section 688 provides in full as follows:

> (a) **Application of railway employee statutes; jurisdiction.**
>
> Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located.
>
> (b) **Limitation for certain aliens; applicability in lieu of other remedy.**
>
> (1) No action may be maintained under subsection (a) of this section or under any other maritime law of the United States for maintenance and cure or for damages for the injury or death of a person who was not a citizen or permanent resident alien of the United States at the time of the incident giving rise to the action if the incident occurred–

(A) while that person was in the employ of an enterprise engaged in the exploration, development, or production of off-shore mineral or energy resources–including but not limited to drilling, mapping, surveying, diving, pipelaying, maintaining, repairing, constructing, or transporting supplies, equipment or personnel, but not including transporting those resources by a vessel constructed or adapted primarily to carry oil in bulk in the cargo spaces; and

(B) in the territorial waters or waters overlaying the continental shelf of a nation other than the United States, its territories or possessions. As used in this paragraph, the term "continental shelf" has the meaning stated in article I of the 1958 Convention on the Continental Shelf.

(2) The provisions of paragraph (1) of this subsection shall not be applicable if the person bringing the action establishes that no remedy was available to that person–

(A) under the laws of the nation asserting jurisdiction over the area in which the incident occurred; or

(B) under the laws of the nation in which, at the time of the incident, the person for whose injury or death a remedy is sought maintained citizenship or residency.

STATEMENT OF THE CASE

This is an appeal from a summary judgment in a maritime personal injury case. Stier was allegedly injured on April 18, 1992 while working on the mobile offshore drilling vessel GEORGE H. GALLOWAY ("the Rig"). The Rig had been in the territorial waters of Trinidad continuously since at least the Summer of 1988. Stier, a German citizen and a resident of Brazil, worked as a mechanic aboard the Rig for that entire period of time.

In the trial court, Stier sought to recover damages and maintenance and cure from his employer, Reading & Bates Drilling Co. and its parent, Reading & Bates Corporation (collectively "Reading & Bates"), pursuant to the Jones Act, 46 U.S.C. § 688, the general maritime law, the laws of the state of Texas, and, in the alternative, the laws of Trinidad. On motion for summary judgment, Reading & Bates sought dismissal of all claims based on the preemptive effect of Section 688(b) of the Jones Act. The trial court granted summary judgment in Reading & Bates' favor, and Stier appealed.

On appeal, Stier conceded that Section 688(b) of the Jones Act applied and that summary judgment was properly granted on his Jones Act and general maritime claims. Stier only sought reversal of the summary judgment as it applied to his claims under Texas law and the laws of Trinidad. The Court of Appeals for the Fourteenth District of Texas affirmed the trial court's summary judgment in all respects.

Stier continued his appeal to the Supreme Court of Texas. Once again, Stier sought reversal of the summary judgment as it applied to his claims under Texas law and the laws of Trinidad. The Supreme Court of Texas held that Section 688(b) preempted Stier's claims under Texas law but did not preempt Stier's claims under the laws of Trinidad. Both Stier and Reading & Bates filed motions for rehearing which were each denied by the Supreme Court of Texas on July 1, 1999.

REASONS FOR GRANTING THE WRIT

A. PRACTICAL CONSIDERATIONS: CONFLICT AMONG STATES THAT DOMINATE OFFSHORE DRILLING MARKET

A conflict exists between two state jurisdictions, the state of Texas and the state of Louisiana, regarding whether Section 688(b) of the Jones Act preempts "foreign law" claims. The courts of appeal of the state of Louisiana have consistently held that Section 688(b) preempts "foreign law" claims. *Jackson v. North Bank Towing Corp.*, 1999 WL 106995, at *4 (La. App. Mar. 3, 1999); *Bolan v. Tidewater Marine Service, Inc.*, 709 So. 2d 1059, 1061 (La. App.), *writ denied*, 720 So.2d 1212 (La. 1998); *Coto v. J. Ray McDermott, S.A.*, 709 So. 2d 1023, 1029-30 (La. App.), *writ denied*, 726 So.2d 904 (La. 1998), *cert. denied*, 119 S. Ct. 1356 (U.S. 1999), *reh'g denied*, 119 S. Ct. 1799 (U.S. 1999). The Supreme Court of Texas has now taken the contrary position.

A substantial amount of offshore drilling is conducted in the coastal waters off each of these states. As a consequence, each of those states is the home of or enjoys substantial contacts with corporations holding a substantial share of the offshore drilling industry abroad. *See* 128 CONG. REC. 25,428 (daily ed. Sept. 28, 1982) (comments of Rep. Hertel) (noting that "[d]uring the [five years preceding the proposed Section 688(b)], 106 [foreign offshore drilling workers'] suits were brought in Texas, Louisiana, Pennsylvania and California against seven of the most active companies in offshore oil industries abroad."), App. 110.

Not surprisingly, then, the state of Louisiana and the state of Texas have been a focal point for much of the litigation regarding the scope of Section 688(b). A survey of case law published by the electronic media shows that an overwhelming majority of the cases that have cited Section 688(b) have been filed in state or federal courts in the states of Louisiana and Texas, respectively. *See* WESTLAW, Database "ALLCASES", Search "688(b)".

More importantly, by its opinion in this case, the state of Texas has become or will become the forum of choice for future cases that wish to avoid the intended consequences of Section 688(b), namely, the restriction of access to the United States court system by foreign offshore drilling workers. As anecdotal evidence of this likely trend, this Court has recently denied the petition for writ of certiorari in the lawsuit *Coto v. J. Ray McDermott, S.A.*, in which the plaintiffs' claims under Louisiana law and the laws of Mexico were dismissed as preempted by Section 688(b) of the Jones Act. *Coto v. J. Ray McDermott, S.A.*, 709 So. 2d 1023, 1029-30 (La. App.), *writ denied*, 726 So.2d 904 (La. 1998), *cert. denied*, 119 S. Ct. 1356 (U.S. 1999), *reh'g denied*, 119 S. Ct. 1799 (U.S. 1999). Following the opinion of the Supreme Court of Texas in the *Stier* suit, the plaintiffs who were dismissed from the *Coto* suit filed an action in the state of Texas based on "foreign law" claims styled *Esquivel. v. Kellogg Brown & Root, Inc.*, No. 1999-36433, in the 190th Judicial District of Harris County, Texas. Moreover, this trend will likely not be isolated to the plaintiffs in *Coto* as most of the corporations engaged in the offshore drilling industry with substantial contacts in the state of Louisiana also have substantial contacts in the state of Texas. As such, this conflict will directly affect most of the cases to which Section 688(b) has applied or is likely to apply in the future.

B. LEGAL PRINCIPLES: ALLOWING "FOREIGN LAW" MARITIME CLAIMS WOULD DIRECTLY CONFLICT WITH AND FRUSTRATE THE PURPOSES OF SECTION 688(B)

Section 688(b) precludes or preempts Stier's "foreign law" maritime claims. Section 688(b) expressly provides that "[n]o action may be maintained under . . . any [] maritime law of the United States" by foreign offshore drilling workers, such as Stier. 46 App. U.S.C.A. § 688(b) (West Supp. 1989). Thus, Section 688(b), on its face, precludes any action under the maritime law of the United States. This would include "foreign law" claims maintained under federal maritime choice-of-law principles.

Likewise, Section 688(b) precludes or preempts all of Stier's state law claims, including "foreign law" claims under state law. State courts only have jurisdiction to maintain maritime claims under the saving-to-suitors clause, 28 U.S.C. § 1333(1). Since the saving-to-suitors clause is, itself, a maritime law of the United States, Section 688(b) expressly precludes any claims under the saving-to-suitors clause and thus effectively precludes all state maritime claims, including state "foreign law" maritime claims.

Finally, even if a state "foreign law" maritime claim could be maintained under the saving-to suitors clause, that state law maritime claim would be preempted because it directly conflicts with or contravenes the essential purpose expressed by an act of Congress. As the legislative history makes plain, Congress created Section 688(b) to deny foreign offshore drilling workers access to the United States court system in maritime cases. Congress intended to deny such access to the United States court system for three reasons: (1) to eliminate forum shopping and to decrease court congestion in the United States court system; (2) to relieve United States companies of the increased operational costs associated with having to defend an action in two nations; and (3) to allow the foreign nations with the greater interest in regulating offshore drilling activities to regulate those activities. Allowing foreign offshore drilling workers to maintain their "foreign law" claims in the state courts of the United States would defeat that purpose and interfere with the accomplishment of those goals. Accordingly, Section 688(b) preempts state "foreign law" maritime claims as well.

1. Plain Language of Section 688(b) Precludes Stier's "Foreign Law" Claims

Any analysis of whether Stier's "foreign law" claims are preempted by Section 688(b) must begin with the language of the statute itself. Subsection 688(b) provides that "[n]o action shall be maintained under [the Jones Act] or ***under any other maritime law of the United States***" by a foreign offshore drilling worker if such

worker has a remedy in either his home nation or the nation where he was injured. 46 App. U.S.C.A. § 688(b) (West Supp. 1989). Section 688(b) precludes such claims on its face because such claims can only be maintained, if at all, under the maritime laws of the United States.

a. "Foreign Law" Maritime Claims Can Not Be Maintained Separate and Apart From Federal or State Law

"Foreign law" maritime claims cannot be maintained in the United States court system separate and apart from federal or state law. While United States jurisdictions, based on principles of comity, sometimes adopt "foreign law" or the substantive law of foreign nations as the law to be applied in a particular case, the law that a state court actually applies must be, by virtue of the judicial power vested in it, either state law or federal law. As this Court has described it:

> The laws of the United States are laws in the several States, and just as much binding on the citizens and courts thereof as the State law are. . . . The two together form one system of jurisprudence which constitutes the law of the land for the State; and the courts of the two jurisdictions are not foreign to each other, nor to be treated by each other as such, but as courts of the same country, having jurisdiction partly different and partly concurrent.

Howlett v. Rose, 496 U.S. 356, 367 (1990) (quoting *Claflin v. Houseman*, 93 U.S. 130 (1876)). The Court's observation that the courts are not "foreign to each other" is instructive in that it implicitly recognizes a simple truism, namely, that the laws of foreign nations, in contrast, are not binding on either state or federal courts. Rather, such "foreign law" only provides the substantive rules to be applied in a particular action to the extent that courts adopt the "foreign law" in a particular case.

The true nature of such "foreign law" claims as laws of the United States can be seen by the limitations that the substantive laws of the United States place on their adoption. First, United States courts will not adopt the laws of another nation as the remedy to be applied in a particular case unless an appropriate relationship exists between the "foreign law" sought to be applied and the incident. *Lauritzen v. Larsen*, 345 U.S. 571, 582 (1953) (determining the law to be applied based on the connecting factors between the transaction regulated and the national interest served by the assertion of authority); *Gutierrez v. Collins*, 583 S.W.2d 312, 318 (Tex. 1979) (adopting the must significant relationship test as the controlling choice-of-law principle under Texas law). Thus, absent such relationship, even if a party could show that a remedy would be available to him under the laws of a foreign nation if such party had sought a remedy for his injuries in the courts of that foreign nation, a United States court would still not be obliged under its own substantive laws to adopt that "foreign law" as the remedy to be applied in a particular case.

Second, even if an appropriate relationship exists, United States courts will still not adopt the laws of another nation as the remedy to be applied in a particular case if the "foreign law" in question conflicts with public policy. *Lauritzen*, 345 U.S. at 591-92 n.27 ("It is true that the act of Congress does not control or profess to control the conduct of a British ship on the high seas. It is true that the foundation for a recovery upon a British tort is an obligation created by British law. But it is also true that the laws of the forum may decline altogether to enforce that obligation on the grounds that it is contrary to the domestic policy, or may decline to enforce it except within such limits as it may impose."(citations omitted)); *Gutierrez*, 583 S.W.2d at 321 ("Finally, there is the question of public policy. Texas courts will not enforce a foreign law that violates good morals, natural justice or is prejudicial to the general interests of our own citizens. This is a limitation recognized by all jurisdictions."(citations omitted)).

Finally, even if a United States court concluded than an appropriate relationship existed and that the "foreign law" in question did not offend public policy, that court would still be under no obligation to apply such law if the parties failed to invoke it or failed to prove it sufficiently for the court to apply it to the facts of the case. FED. R. CIV. P. 44.1 (specifying procedure for adoption of foreign law); TEX. R. EVID. 203 (specifying procedure for adoption of foreign law); *MCA, Inc. v. United States*, 685 F.2d 1099, 1104 (9th Cir. 1982) (noting that the court was not obliged to and would not, in fact, adopt Netherlands law, though Netherlands law presumably applied to the issues in question, where the parties neither gave written notice of the applicability of Netherlands law nor sought to establish Netherlands law before the district court); *Riffe v. Magushi*, 859 F. Supp 220, 223-24 (S.D. W. Va. 1994) (applying law of forum state rather than Japanese law where presentation of relevant Japanese law was insufficiently precise for application to the issues in the case); *see also Holden v. Capri Lighting, Inc.*, 960 S.W.2d 831, 833 (Tex. App.–Amarillo 1997, no writ) (noting that trial court may, in its discretion, choose not to judicially notice the law of a sister-state if the moving party fails to furnish the court with sufficient information to establish the law of such state). Thus, 'foreign law" claims cannot be maintained separate and apart from the state or federal laws that apply them in a particular case.

b. Section 688(b) Precludes "Foreign Law" Maritime Claims Maintained Under Federal Maritime Choice-of-Law Principles

Consequently, it follows that Section 688(b) expressly precludes "foreign law"maritime claims maintained under federal maritime choice-of-law principles because Section 688(b) expressly precludes all claims "maintained under . . . any [] maritime law of the United States." As noted above, "foreign law" claims may not be maintained in United States court system unless such "foreign law" claims could be maintained under applicable federal or state choice-of-law principles. Notably, the choice-of-law rules

applicable to maritime claims are, themselves, maritime law. *See also Advani Enterprises, Inc. v. Underwriters at Lloyds*, 140 F.3d 157, 162 (2d Cir. 1998) (concluding that "general federal maritime law, including federal choice-of-law rules apply" to suit based on maritime contract); *Millanovich v. Crociere*, 954 F.2d 763, 766 (D.C. Cir. 1992) (concluding that the substantive law applicable to maritime contract was "the general federal maritime law, including maritime choice-of-law rules"). Thus, Section 688(b) expressly precludes "foreign law" claims maintained under federal maritime choice-of-law principles.

c. Section 688(b) Precludes All State Maritime Claims Maintained Under the Federal Maritime Saving-to-Suitors Clause

Likewise, Section 688(b) precludes or preempts all of Stier's state law claims, including "foreign law" claims based on state law. State courts only have jurisdiction to maintain maritime claims under the saving-to-suitors clause, 28 U.S.C. § 1333(1). Moreover, the saving-to-suitors clause is, itself, a maritime law of the United States. Consequently, Section 688(b) expressly precludes any claims under the saving-to-suitors clause and thus effectively precludes all state maritime claims, including state "foreign law" maritime claims.

No dispute should exist that Stier's claims are maritime claims and invoke admiralty jurisdiction. *Executive Jet Aviation, Inc. v. City of Cleveland*, 409 U.S. 249, 267-71 (1972). In this case, Stier has sued his employer for injuries allegedly sustained by him while working as a member of the crew of a mobile offshore drilling vessel engaged in operations in the navigable waters of a foreign country. As such, no question should exist that Stier's claims, whether foreign or domestic, are maritime claims and that maritime law applies. STEVEN F. FRIEDELL, BENEDICT ON ADMIRALTY § 106, at 7-15 (7th ed. 1998) (noting that admiralty jurisdiction extends, among other claims, to "any claim for loss of life or personal injury sustained in consequence of any defect in a vessel

or in her apparel or equipment, or of the wrongful act, neglect or default of the owners, charters or persons in possession or control of a vessel . . . ."); *see also Guidry v. Continental Oil Co.*, 640 F.2d 523, 529 (5th Cir.), *cert. denied*, 454 U.S. 818 (1981) (concluding that a mobile offshore drilling rig is a vessel).

No dispute should also exist that Stier's maritime claims may only be maintained, if at all, in state court under the saving-to-suitors clause, 28 U.S.C. § 1333(1). Section 1333(1) provides, in relevant part, that:

> The district courts shall have exclusive jurisdiction, exclusive of the courts of the States, of:
>
> > (1) Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled.

28 U.S.C.A. § 1333(1) (West 1993). This Court has interpreted the saving-to-suitors clause as granting state courts the authority to maintain a remedy for maritime injuries, but only if and to the extent that such remedies do not conflict with substantive federal maritime law. *Offshore Logistics, Inc. v. Tallentire*, 477 U.S. 207, 222-23 (1986); *Chelentis v. Luckenbach S.S. Co.*, 247 U.S. 372 (1918). Thus, Stier's "foreign law" maritime claims may only be maintained, if at all, under the saving-to-suitors clause, 28 U.S.C. § 1333(1).

The saving-to-suitors clause is by definition a maritime law of the United States. Section 688(b), of course, precludes any action "maintained" under the "maritime law of the United States." Accordingly, Section 688(b) precludes all of Stier's state law claims because those claims can only be maintained, if at all, under the saving-to-suitors clause. *Jackson v. North Bank Towing Corp.*, 1999 WL 106995, at *4 (La. App. Mar. 3, 1999).

2. *State "Foreign Law" Maritime Claims Preempted by Section 688(b) Because Such Claims Would Directly Conflict With and Frustrate Purpose for Which Section 699(b) Was Created*

Section 688(b) also preempts Stier's "foreign law" maritime claims because the maintenance of such claims would directly conflict with or contravene the essential purpose for which Section 688(b) was created. As the legislative history makes plain, Congress created Section 688(b) to deny foreign offshore drilling workers access to the United States court system in maritime cases. Allowing foreign offshore drilling workers to maintain their "foreign law" maritime claims in state courts, then, would defeat the purposes for which Section 688(b) was created. Moreover, allowing state courts to maintain "foreign law" maritime claims under state choice-of-law principles would directly conflict with Section 688(b) which precludes all federal maritime claims, including "foreign law" maritime claims maintained under federal maritime choice-of-law principles.

a. The Preemption Standard

The Supreme Court of Texas improperly concluded that Section 688(b) did not preempt Stier's foreign law claims, in part, because the Supreme Court of Texas failed to apply the appropriate preemption standard. A substantial portion of the opinion of the Supreme Court of Texas was directed to whether the United States Supreme Court would continue to hold that state law is preempted in admiralty where the law "works material prejudice to the characteristic features of the general maritime law or interferes with the proper harmony and uniformity in its international and interstate relations." App. 26 (discussing *Southern Pacific Co. v. Jensen*, 244 U.S. 205 (1917)). As a consequence, the Supreme Court of Texas failed to apply the simpler preemption principle applicable in both admiralty and non-admiralty case alike, namely, whether the state law in question would directly conflict with or frustrate the purposes of an act of Congress, in this case 46 U.S.C. § 688(b).

This Court's decision in *Jensen* does provide that state law will be preempted where it "works material prejudice to the characteristic features of the general maritime law or interferes with the proper harmony and uniformity in its international and interstate relations." *Jensen*, 244 U.S. at 216. However, *Jensen* also states more simply within that same passage that state law will be preempted if it "contravenes the essential purpose expressed by an act of Congress." *Id.* at 216; *see also Offshore Logistics, Inc. v. Tallentire*, 477 U.S. at 232. Similarly, non-maritime preemption cases provide that an act of Congress will preempt state law if the state law in question directly conflicts with a federal statute, if the application of state law would frustrate the federal statutory scheme, or if the federal statutory scheme manifests an intent by Congress to occupy the field to the exclusion of state law. *Bldg. & Constr. Trades Council of the Metropolitan Dist. v. Associated Builders & Contractors of Massachusetts/Rhode Island, Inc.*, 507 U.S. 218, 224 (1993); *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 747-48 (1985); *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 208-09 (1985).

Here, allowing state "foreign law" claims would both directly conflict with and frustrate the purposes of section 688(b) because allowing foreign offshore drilling workers to maintain any maritime claims in state court, including "foreign law" maritime claims, would defeat the purposes for which Section 688(b) was created.

b. **Allowing "Foreign Law" Maritime Claims Would Frustrate Purpose Behind Section 688(b)**

Section 688(b) preempts Stier's "foreign law" maritime claims because to allow such claims would defeat the purposes for which Section 688(b) was created. The Supreme Court of Texas concluded that Section 688(b) did not preempt "foreign law" because it was merely a choice-of-law provision. The court's conclusion, however, ignores the plain legislative history, the structure of the Jones Act, taken as a whole, and the law Section 688(b) was intended to codify.

i. Legislative history confirms Section 688(b) intended to deny access to United States court system

A complete review of the legislative history confirms that Congress intended Section 688(b) to preclude access to the United States court system by foreign offshore drilling workers who had a remedy available to them in either their home nation or the nation where they were injured. In the section of the House Committee Report on Section 688(b) entitled "Purpose of the Legislation," the House Committee described the purpose of the legislation as follows:

> The legislation addresses the situation where a foreign worker, injured in the territorial waters or over the continental shelf of a nation other than the United States, seeks legal relief in the courts of the U.S. The legislation provides that ***a suit*** may not be maintained in that situation under U.S. law unless the injured party has no remedy in either his country of citizenship or nationality or the country exercising jurisdiction over the waters where the incident giving rise to the injury occurred.

House Comm. on Merchant Marine and Fisheries, Recovery of Damages for Foreign Seamen, H.R. REP. NO. 863, 97th Cong., 2d Sess. 2 (1982) ["House Committee Report"] (emphasis added), App. 44.

By the word "suit," the House Committee Report intended to emphasize that the purpose of the legislation was to preclude an offshore drilling worker's access to the United States court system and not simply to specify the law to be applied to foreign offshore drilling workers' claims. In a subsequent section on the constitutionality of Section 688(b), the Committee reemphasized this point, stating:

> The Committee finds that the proposed legislation does not abridge the fundamental right to be compensated for a work-related injury; it merely requires that the worker utilize administrative and judicial remedies available in his own nation or the host nation before seeking relief in the U.S. court system.
>
> Numerous Federal and State statutes restrict access to various U.S. courts. For example, workman's compensation systems usually require a worker to have his claim determined by a compensation board rather than a court.

House Committee Report at 7, App. 56. Additional comments of the House Committee confirm this interpretation. *See* House Committee Report at 4, App. 49 (noting that "the place of the injury is an appropriate forum in which to seek redress."); House Committee Report at 7, App. 56 (observing that "the proposed legislation merely requires that an injured foreign worker utilize his foreign remedy before seeking relief in a U.S. court.")

More importantly, the salutary goals of the legislation as set forth by the House Committee further confirm that the purpose of the legislation was to deny foreign offshore drilling workers access to the United States court system. The House Committee identified the salutary goals to be achieved as follows: (1) to eliminate forum shopping and to decrease court congestion in the United States court system; (2) to relieve U.S. companies of the increased operational costs associated with having to defend an action in two nations; and (3) to allow the foreign nations with the greater interest in regulating offshore drilling activities to regulate those activities. House Committee Report at 2-4, App. 46-50.

The Committee's discussion of these goals illustrates the Committee's belief that Section 688(b) would achieve those goals by denying foreign offshore drilling workers access to the United States court system, goals that would be almost wholly defeated if

such foreign offshore drilling workers were allowed to maintain "foreign law" maritime claims in the United States court system. With regard to forum shopping and court congestion, the Committee remarked that:

> There will be no unfairness to the offshore worker, since he can still bring suit in the place where he has chosen to live or work. Trial at the place of injury will ensure greater ease of access to sources of proof, proximity of potential witnesses, and ability to join additional parties who are not subject to suit in the U.S. The bill should discourage forum shopping and decrease U.S. court expenses and backlogs.

House Committee Report at 4, App. 50. Thus, the comments of the Committee illustrate that the Committee considered the proper forum for the claims of foreign offshore drilling workers to be the forum where the injured occurred. The comments of the Committee also show that the Committee considered denial of access to the United States court system to be an effective means by which Congress could discourage forum shopping and decrease court congestion in the United States court system. Allowing foreign offshore drilling workers to maintain "foreign law" maritime claims in United States courts would interfere with the accomplishment of both of those goals.

With regard to the goal of relieving United States companies of the increased operational costs associated with having to defend an action in two nations, the Committee observed:

> The present state of the law, as applied to the offshore oil and mineral industry, increases the cost of operation of U.S. companies due to the higher insurance and legal costs associated with the need to obtain liability coverage to defend an action in two countries (the host country and the United States).

House Committee Report at 3, App. 46. Once again, allowing foreign offshore drilling workers to maintain "foreign law" maritime claims in United States courts would defeat that goal because United States companies would still have to obtain liability coverage to defend an action in two countries.

With regard to the goal of allowing the foreign nations with the greater interest in regulating offshore drilling activities to regulate those activities, the Committee remarked:

> [Subsection 688(b)] recognizes the strong interest of foreign nations in regulating conduct occurring within their sovereign territory and ***directs that U.S. courts should not entertain maritime-based suits*** brought by foreign workers injured on another nation's Outer Continental Shelf except when no remedy is available to those workers.

House Committee Report at 6, App. 53 (emphasis added). And again, by analogy to the exclusive remedy provisions of worker's compensation statutes, the Committee remarked:

> Just as a workman's compensation system can constitutionally require the utilization of an administrative agency, Congress by this legislation will require that nonresident workers utilize the administrative and judicial systems of the nation with the greater contact and interest in the incident giving rise to the worker's claim.

House Committee Report at 7, App. 56-57. Significantly, the Committee comments show that the Committee sought to empower the nation with the greater interest in regulating offshore drilling activities, that is, the nation where the activities occurred, to accomplish that goal through its courts, and not simply through its laws. Thus, the Committee specifically did not believe that goal could be achieved merely through a choice-of-law provision. Allowing foreign offshore drilling workers to maintain "foreign

law" maritime claims in United States courts would substantially impair that goal by placing the responsibility for regulating the offshore drilling activities of a foreign nation in the hands of United States courts unfamiliar with the laws of the nation whose offshore drilling activities are being regulated.

Comments from several members of Congress also confirm the Committee's understanding of the purpose of Section 688(b).

> Congressman Biaggi: Most court decisions have held that a foreign offshore worker injured on a foreign Continental Shelf should not bring his action in a U.S. court–unless he lacks a remedy in the host nation or his home nation. [Section 688(b)] will codify this judicial precedent.
>
> Congresswoman Boggs: These cases should not be tried in American courts; rather, they should be tried under the laws of the jurisdiction in which the incident occurred.
>
> Congressman Derwinski: If [Section 688(b)] is enacted, such a foreign worker would not be able to obtain a remedy in U.S. courts if he had a remedy available in his home nation, or in the nation with jurisdiction over the accident site, if different.
>
> Congressman Fields: In an effort to clarify this situation, [Section 688(b)] stipulates that an injured foreign worker must first seek relief in either the court system where the accident occurred or the courts of his own nation. If the worker is unable to obtain redress in either of these court systems, then, and only then, may he utilize our court system and petition for relief. In short, this bill directs those foreign injured workers to utilize our court system as a remedy of the last resort not of the first, as is currently the case.

> Congressman Hubbard: [Section 688(b)] would provide the needed clarification by establishing that such a foreign worker may not seek a remedy in a U.S. court for personal injury arising overseas if he has a remedy available in his home nation, or in the nation with jurisdiction over the accident site.
>
> Congressman Joel Pritchard: If there is a remedy available to him through a foreign jurisdiction, then he is precluded from instituting an action in the U.S. courts.
>
> Congressman Gene Snyder: [T]his bill would require a foreign seaman injured while engaged in offshore drilling activity in waters of a foreign country to first pursue whatever legal remedy is available to him through the country in whose jurisdiction he was injured or in the country in which he is a citizen or resident before he comes to the U.S. judicial system. If there is a remedy available to him through a foreign jurisdiction, then he is precluded from instituting an action in the U.S. courts.

128 CONG. REC. 25,422-25,429 (daily ed. Sept. 28, 1982), App. 73-115; 128 CONG. REC. 30,055 (daily ed. Dec. 10, 1982).

Thus, a complete review of the legislative history shows that Section 688(b) was intended to restrict the access of foreign offshore drilling workers to the United States court system.

ii. Language of Jones Act, taken as a whole, shows that Congress intended Section 688(b) to preclude access to United States court system

The Supreme Court of Texas appears to have appreciated at least to a limited extent the degree to which allowing "foreign law" maritime claims would defeat the purposes for which Section 688(b) was created. App. 25-26. The Supreme Court of Texas, however, dismissed these concerns on the grounds that "the sounder reading

of section 688(b), at least with regard to its impact on state courts, is that it is a choice-of-law provision." App. 25. As demonstrated above, a complete review of the legislative history illustrate that the Committee did not perceive Section 688(b) merely as a choice-of-law provision. If anything, the Committee considered Section 688(b) to be akin to the exclusive remedy provisions that appear in worker's compensation statutes.

Likewise, a comparison of the language in subsection 688(a) and subsection 688(b) further rebuts the assertion that Section 688(b) was intended by Congress merely as a choice-of-law provision. Subsection 688(b) states that ***"[n]o action shall be maintained*** under subsection (a) of this section or under any other maritime law of the United States . . . ." 46 U.S.C.A. App. § 688(b) (West Supp. 1989) (emphasis added). Put another way, subsection 688(b), on its face, directs United States courts to, in the words of the House Committee Report, "not entertain maritime-based suits brought by foreign workers injured on another nation's Outer Continental shelf except when no remedy is available to those workers." House Committee Report at 6, App. 53. In stark contrast, subsection 688(a) provides that:

> Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees **shall apply**; and in case of death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees **shall be applicable.**

46 App. U.S.C.A. § 688(a) (West Supp. 1989) (emphasis added). Thus, subsection 688(a), on its face, specifies the law to be applied in actions arising under that section.

Under standard rules of statutory construction, statutes should be construed as a whole in order to give appropriate meaning to every part. *United States Nat'l Bank of Oregon v. Independent Ins. Agents of America, Inc.*, 508 U.S. 439, 455 (1993) ("In expounding a statute, [the Court] must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law and to its object and policy.") As a corollary to this approach, this Court has observed that differing language in the same statute should be interpreted to have different meanings. *Russello v. United States*, 464 U.S. 16, 23 (1983).

In this case, Congress placed subsection 688(b) in close proximity to subsection 688(a) which specifies in plain, unmistakable language the law to be applied in Jones Act cases. If Congress had also intended subsection 688(b) to be a choice-of-law provision, it would have employed similar language. For instance, Congress could have said that "neither section (a) of this section nor any other maritime law of the United States for maintenance and cure or for damages for the injury or death of a person shall apply to . . . ." However, Congress did not. Instead, Congress stated that "[n]o action shall be maintained." Thus, Congress intended Section 688(b) to preclude an action by a foreign offshore drilling worker based on maritime law when such foreign offshore drilling worker had a remedy available to him in either his home nation or the nation where he was injured. To conclude otherwise, that is, that Section 688(b) merely specifies the law to be applied to foreign offshore drilling workers, ignores the difference in the language employed in the two subsections or assumes that Congress was not familiar with the language in Section 688(a) even though Section 688(b) refers specifically to "subsection (a)."

iii. Section 688(b) codifies cases that held that "foreign law" maritime claims could not be maintained in United States courts.

The view of the Supreme Court of Texas of Section 688(b) as a choice-of-law provision appears to have been influenced in large part by dicta in cases and remarks by commentators cited by Stier for this proposition. The short-hand descriptions of Section 688(b) by these authorities are misleading, however, because they oversimplify the law that Section 688(b) was intended to codify.

As several of these authorities state, Section 688(b) was intended to codify prior case law. Section 688(b), however, was not intended to codify simple choice-of-law cases. Rather, prior to the enactment of Section 688(b), a complex conflicts of law analysis was required in order to determine whether a case should be maintained or dismissed based upon the doctrine of forum non conveniens. This analysis was burdensome and often yielded inconsistent results. House Committee Report at 3, App. 46; 128 CONG. REC. 25,425, 25,426 and 25,429 (1982) (statements of Reps. Derwinski, Hubbard, and Livingston), App. 113, 91, and 96. Essentially, Section 688(b) was enacted to codify cases that dismissed foreign offshore drilling worker's claims under the doctrine of forum non conveniens after determining that foreign law applied under federal maritime choice-of-law principles. House Committee Report at 3 n.4, App. 46 (citing *Chiazor v. Transworld Drilling Co.*, 648 F.2d 1015 (5th Cir. 1981), *cert. denied*, 455 U.S. 1019 (1982)). In *Chiazor*, the Fifth Circuit held that a district court did not abuse its discretion in dismissing a foreign offshore drilling worker's claims on the basis of forum non conveniens having implicitly determined that "foreign law" applied.

Section 688(b), then, was not intended to codify ***the process*** by which dismissal was reached (either choice-of-law or forum non conveniens) but ***the result***, namely, dismissal. Thus, the prior case law Section 688(b) was intended to codify also supports the

interpretation of Section 688(b) as restricting the access of foreign offshore drilling workers to the United States court system.

c. Allowing "Foreign Law" Maritime Claims Would Directly Conflict With Section 688(b)

Allowing "foreign law" maritime claims in state courts would directly conflict with Section 688(b) because Section 688(b) expressly precludes any remedies for foreign offshore drilling workers under federal maritime law, including "foreign law" claims under federal maritime choice-of-law remedies. As noted above, both *Jensen* and non-maritime preemption cases hold that federal statutes preempt state law where such state law directly conflicts with the federal statute or where the application of state law would frustrate the purposes of the federal statute. *See supra* subsection B.2.a. In particular, this Court has held that state law remedies are preempted and may not be maintained where Congress has by statute proscribed any such remedy under federal law. *Offshore Logistics, Inc. v. Tallentire*, 477 U.S. at 232.

In *Offshore Logistics, Inc. v. Tallentire*, this Court was asked to decide whether lower courts were free to supplement the Death on the High Seas Act ("DOSHA") with non-pecuniary damages available under Louisiana law. After determining that Section 7 of DOSHA acted as a jurisdictional savings clause, this Court observed that the conclusion that DOSHA pre-empted state law was "inevitable." *Id.* at 232. In reaching this conclusion, this Court observed:

> As we held in *Higginbotham*, Congress has "struck the balance for us" in determining that survivors should be restricted to the recovery of their pecuniary losses, and when DOSHA "does speak directly to a question, the courts are not free to 'supplement' Congress' answer so thoroughly that the Act becomes meaningless."

Id. at 232 (quoting *Mobil Oil Corp. v. Higginbotham*, 436 U.S. 618, 625 (1978)).

In this case, Congress has spoken. It has specifically enacted a statute that provides that: "[n]o action may be maintained under . . . any [] maritime law of the United States." For the reasons set forth in subsection B.1.b, this statute thus precludes a remedy under any maritime law of the United States, including "foreign law" claims under federal maritime choice of law principles. Moreover, this interpretation is wholly consistent with the purpose for which Section 688(b) was created, namely, to restrict the access of foreign offshore drilling workers to the United States court system. *See supra* subsection B.2.b.i. Allowing "foreign law" claims in state court would defeat that purpose. Accordingly, Section 688(b) preempts Stier's foreign law remedies under state law as well.

In reaching the contrary conclusion, the Supreme Court of Texas reasoned that Section 688(b) did not preempt such claims because "state *forum non conveniens* laws are not a 'characteristic feature' of admiralty law and do not interfere with the 'proper harmony' of maritime law." App. 26. The question presented here, however, is not whether allowance of state "foreign law" maritime claims would "work[] material prejudice to the characteristic features ***of the general maritime law*** or interfere[] with the proper harmony and uniformity in its international and interstate relations," but whether a Congressional Act, Section 688(b), preempts state "foreign law" maritime claims. In this case, allowing state "foreign law" maritime claims would frustrate the purposes of Section 688(b) and thus are preempted by it. Whether forum non conveniens law is a characteristic feature of the general maritime law, then, is simply beside the point.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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Counsel for Petitioners
Reading & Bates Corporation
and Reading & Bates Drilling Co.

Hans-Henning STIER, Petitioner,

v.

READING & BATES CORPORATION and Reading & Bates Drilling Company, Respondents.

No. 96-1165.

Supreme Court of Texas.

Argued Sept. 9, 1998.

Decided April 8, 1999.

Robert D. Green, Michael L. Davis, Houston, for Petitioner.

John Pearson, James J. Sentner, Jr., Orin H. Lewis, Giorgio Caflisch, Houston, for Respondents.

Justice OWEN delivered the opinion of the Court in which Chief Justice PHILLIPS, Justice HECHT, Justice ENOCH and Justice ABBOTT join.

A citizen of Germany who resided in Brazil was injured while working on a mobile offshore drilling vessel that was berthed at a terminal in Trinidad. He sued his employer, whose principal offices were in Texas, asserting claims under the Jones Act, general maritime law, the substantive laws of Texas, and the laws of Trinidad. The trial court granted summary judgment for his employer on the basis that all claims were preempted by federal law. The court of appeals affirmed. ___ S.W.2d ___, 1996 WL 490625. We affirm the judgment of the court of appeals regarding the claims based on Texas law because those claims are preempted by section 688(b) of the Jones Act, 46 U.S.C. app. § 688(b). We reverse the judgment of the court of appeals in part and remand the claims arising

under Trinidad law to the trial court because those claims are not preempted by federal law.

I

At the time of his injury, Hans-Henning Stier was a citizen of Germany who resided in Brazil. He was not a citizen or resident alien of the United States. Stier was employed by Reading & Bates Drilling Co., a Texas-based company, as a worker in its offshore drilling business and had been employed by that company for more than seventeen years. Over the years of his employment, Reading & Bates periodically brought Stier to the United States for training, and Stier had frequent contact with his employer's Houston office by mail and telephone. Stier maintained bank accounts in Texas or Florida. However, his work assignments from Reading & Bates have always been in locales other than the United States or its territorial waters.

During the four years prior to his injury, Stier worked as a mechanic on a mobile drilling rig that was an American flag vessel operating in the territorial waters of Trinidad. When Stier's injury occurred, the rig was docked in Trinidad awaiting another assignment. Stier was dismantling and reassembling the crown block on the deck of the rig when he was hit in the head by a hook on a sling operated by other employees of Reading & Bates. Stier was taken by air ambulance to Florida where he was hospitalized for those injuries, and he subsequently received treatment from Houston physicians and hospitals.

Stier sued Reading & Bates Drilling Co. and its parent company Reading & Bates Corporation in state district court in Houston, Texas, where both companies maintain their principal offices. As there is no need to distinguish between these two corporate entities for purposes of this opinion, we will refer to them jointly as Reading & Bates. Stier asserted claims under the Jones Act and under general maritime law for negligence, unseaworthiness, and maintenance and cure as a vessel crew member. He also asserted claims based on Texas law and, in the alternative, claims under the laws of Trinidad.

Reading & Bates moved for summary judgment, contending that section 688(b) of the Jones Act, 46 U.S.C. app. § 688(b), expressly precludes any claims based on federal statutes or federal common law because Stier had remedies under the laws of Germany, Brazil, and Trinidad. Reading & Bates also contended that section 688(b) of the Jones Act preempts all of Stier's other claims based on Texas substantive law and the laws of Trinidad. The trial court granted Reading & Bates's motion. Stier did not appeal the trial court's adverse rulings regarding his federal law claims, conceding that he is foreclosed from pursuing any federal claims by section 688(b) of the Jones Act. He contends only that he is not foreclosed by section 688(b) from pursuing in a Texas court state-law remedies or remedies under Trinidad law.

The court of appeals affirmed the trial court's judgment in all respects. For the reasons we consider below, we affirm the disposition of Stier's state-law claims but reverse the dismissal of Stier's claims based on Trinidad law and remand them to the trial court.

II

Until its amendment in 1982, the Jones Act provided that the same remedies available under all statutes of the United States to railroad employees or their personal representatives were available to any seaman who suffered personal injury in the course of employment or to the personal representative of any seaman who died as a result of that personal injury.[1] In addition to the Jones Act, seamen or their survivors have certain remedies under the Death on the High Seas Act (DOHSA), 46 U.S.C. app. §§ 761-67, and general federal maritime law. Further, state law remedies that do not conflict with federal law remedies are available to seamen. *See generally Miles v. Apex Marine Corp.*, 498 U.S. 19, 111 S.Ct. 317,

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[1] Section 688 provided:

> Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located.

46 U.S.C. § 688 (1976) (amended 1982).

112 L.Ed.2d 275 (1990) (discussing remedies available to seamen).

Prior to 1982, section 688 of the Jones Act did not expressly draw any distinction among seamen on the basis of their citizenship or domicile and did not expressly require that the employment or the injury or death have any nexus with the United States. However, courts have not construed section 688 (now subsection 688(a)) literally and have not applied it to all foreign seamen. *See Lauritzen v. Larsen,* 345 U.S. 571, 577, 73 S.Ct. 921, 97 L.Ed. 1254 (1953) (observing that Congress did not intend to extend "our law and open [ ] our courts to all alien seafaring men injured anywhere in the world in service of watercraft of every foreign nation"). The availability of remedies under former section 688 (now subsection 688(a)) of the Jones Act or other American maritime law is to be determined by choice-of-law principles as articulated by the United States Supreme Court in *Lauritzen* and other decisions. *See Lauritzen,* 345 U.S. at 583-92, 73 S.Ct. 921; *see, e.g., Hellenic Lines Ltd. v. Rhoditis,* 398 U.S. 306, 308-10, 90 S.Ct. 1731, 26 L.Ed.2d 252 (1970).

But trial and appellate courts have not uniformly applied these choice-of-law guidelines. It appears that a seaman such as Stier would not have had a remedy based on former section 688 of the Jones Act in some federal circuits but might have stated a cause of action under decisions of the Second Circuit. *Compare Chiazor v. Transworld Drilling Co.,* 648 F.2d 1015 (5th Cir. June 1981), overruled on other grounds by *In re Air Crash Disaster,* 821 F.2d 1147 (5th Cir. 1987), *Phillips v. Amoco Trinidad Oil Co.,* 632 F.2d 82 (9th Cir. 1980), *and DeMateos v. Texaco, Inc.,* 562 F.2d 895, 902 & n.3 (3d Cir. 1977) (noting that the

Second Circuit has "taken an expansive view on . . . export of American maritime law" but declining to take so broad a view of the Jones Act), *with Antypas v. Cia. Maritima San Basilio, S.A.*, 541 F.2d 307 (2d Cir. 1976), *and Moncada v. Lemuria Shipping Corp.*, 491 F.2d 470 (2d Cir. 1974); *see also Vaz Borralho v. Keydril Co.*, 710 F.2d 207, 210 (5th Cir. 1983) (discussing the split among the federal circuit courts on choice of law and the availability of the Jones Act to foreign seamen).

In 1982, Congress amended the Jones Act and expressly drew a distinction with regard to certain foreign, nonresident workers in the offshore drilling and exploration industry who were injured while over the continental shelf or in the territorial waters of another country. Congress amended section 688 to designate its then-existing provisions as subsection (a) and to add subsection (b), which provides:

> (b) **Limitation for certain aliens; applicability in lieu of other remedy**
>
> (1) No action may be maintained under subsection (a) of this section or under any other maritime law of the United States for maintenance and cure or for damages for the injury or death of a person who was not a citizen or permanent resident alien of the United States at the time of the incident giving rise to the action if the incident occurred –
>
> (A) while that person was in the employ of an enterprise engaged in the exploration, development, or production of offshore mineral or energy resources – including but not limited to drilling, mapping, surveying, diving, pipelaying, maintaining, repairing, constructing, or

> transporting supplies, equipment or personnel, but not including transporting those resources by [a] vessel constructed or adapted primarily to carry oil in bulk in the cargo spaces; and
>
> (B) in the territorial waters or waters overlaying the continental shelf of a nation other than the United States, its territories, or possessions. As used in this paragraph, the term "continental shelf" has the meaning stated in article I of the 1958 Convention on the Continental Shelf.
>
> (2) The provisions of paragraph (1) of this subsection shall not be applicable if the person bringing the action establishes that no remedy was available to that person –
>
> (A) under the laws of the nation asserting jurisdiction over the area in which the incident occurred; or
>
> (B) under the laws of the nation in which, at the time of the incident, the person for whose injury or death a remedy is sought maintained citizenship or residency.

46 U.S.C. app. § 688(b).

Accordingly, a foreign, nonresident seaman engaged in certain aspects of offshore exploration in the territorial waters of another country may pursue claims under the Jones Act or other maritime laws of the United States, but only if he or she has no remedy under the laws of the nation in whose waters the injury occurred or under the laws of a nation in which the seaman resides or is a citizen. If a remedy exists under the laws of one of those nations, a seaman such as Stier cannot pursue claims under the Jones Act, the DOHSA, or general federal maritime law. *See Camejo v. Ocean Drilling & Exploration,*

838 F.2d 1374, 1377 (5th Cir. 1988); *Samuel v. Tidewater Marine Servs.*, 943 F. Supp. 644, 646 (E.D. La. 1996); *Brown v. Atwood Oceanics, Inc.*, 676 F. Supp. 720, 721 (M.D. La. 1988).

The reasoning that prompted the amendment to section 688 of the Jones Act was expressed in a report by the House Committee on Merchant Marine and Fisheries, from which the bill amending the Act originated. *See* H.R. REP. NO. 97-863 (1982).[2] One of the fundamental conclusions of the House Report was that there were sound reasons to draw distinctions between traditional, blue-water seamen and foreign seamen engaged in the offshore exploration industry who worked in the territorial waters of another nation. The House Report recounted that traditional maritime activities did not have a constant site of operations and that traditional seagoing vessels passed through the jurisdictions of many different nations. *Id.* at 2. The report explained that because the situs of a blue-water vessel constantly changes, maritime law historically has "recognized the limitations of applying the 'place of injury' concept" to maritime torts. *Id.* The report observed that "the more constant law of the flag has been held to govern most maritime torts." *Id.* However, the House Report concluded that these reasons for extending Jones Act remedies to seamen killed or injured in traditional activities of the maritime industry did not apply to an offshore oil worker because offshore exploration activities are "localized, with most workers never leaving their own national waters." *Id.* at 4.

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[2] The provisions of H.R. 4863 that amended section 688 of the Jones Act were incorporated without substantial change in H.R. 3942, section 503. *See* 128 CONG. REC. 30053-55 (1982).

The report also observed that United States companies operating in the territorial waters of another nation were subject to that nation's laws and to the jurisdiction of that nation's courts. *Id.* The report concluded, "[f]inally, there is another nation with a greater interest in regulating the conduct in question." *Id.* The House Report identified several additional concerns and objectives.

First, the lack of uniformity in applying the Jones Act to foreign seamen had not escaped the notice of the House Committee. The House Report observed that some courts had entertained suits under the Jones Act by foreign nationals (citing as an example a suit filed in a Harris County, Texas district court, *id.* at 3 n.4) while others had not and that:

> [a]s a result, the determination as to whether it is appropriate to commence a suit in the United States depends not on the statutory right granted by the Jones Act but rather on the happenstance of where the suit is instituted or which district judge hears the case. The Committee finds that this lack of uniform treatment is unjustified and unreasonable.

Id. at 3.

Second, the report observed that the then-present state of the law "increase [d] the cost of operation of U.S. companies due to higher insurance and legal costs associated with the need to obtain liability coverage to defend an action in two countries (the host country and the United States)." *Id.* Third, the House Report expressed the concern that lawsuits by foreign offshore workers had increased court congestion. *Id.* Additionally, the House Report voiced its concern that the United States was

unduly extending the laws of our nation into the territories of other sovereign nations:

> [Subsection 688(b)] recognizes the strong interest of foreign nations in regulating conduct occurring within their sovereign territory and directs that U.S. courts should not entertain maritime-based suits brought by foreign workers injured on another nation's Outer Continental Shelf except when no remedy is available to those workers.
>
> * * *
>
> The present situation whereby domestic United States law is applied to actions and occurrences within the jurisdiction of a sovereign foreign nation is an unwarranted application and extraterritorial extension of U.S. law and not in accord with our treaties of friendship and navigation.

Id. at 6, 7.

The House Report also expressed the desire to place a foreign offshore worker injured in foreign jurisdictions in the same position as his or her "shoreside counterpart" and to "discourage forum shopping and decrease U.S. court expenses and backlogs." *Id.* at 4.

Stier does not dispute that he was a foreign seaman employed in the exploration of offshore energy sources within the meaning of section 688(b) or that he has a remedy for his injuries under the laws of Trinidad, Germany, or Brazil. And Stier now concedes that because he has a remedy in one of those countries, there are no federal-law remedies available to him. The only questions that we must decide are whether, in light of the history

and purposes of section 688(b) of the Jones Act and the development of general federal maritime law, the claims that Stier has asserted under Texas law and alternatively under Trinidad law are preempted. We first examine the legal precepts that govern our preemption analysis.

III

Historically, courts that have considered preemption issues under maritime law have looked to the admiralty clause of the United States Constitution. *See American Dredging Co. v. Miller*, 510 U.S. 443, 446, 114 S.Ct. 981, 127 L.Ed.2d 285 (1994). The admiralty clause provides that the federal judicial power "shall extend . . . to all Cases of admiralty and maritime Jurisdiction." U.S. CONST. art. III, § 2, cl. 1. Decisions in which preemption issues arise under admiralty law typically have not applied or even mentioned the Supremacy Clause and preemption precedent thereunder such as *Freightliner Corp. v. Myrick*, 514 U.S. 280, 115 S.Ct. 1483, 131 L.Ed.2d 385 (1995), *English v. General Electric Co.*, 496 U.S. 72, 78-86, 110 S.Ct. 2270, 110 L.Ed.2d 65 (1990), or *Maryland v. Louisiana*, 451 U.S. 725, 746-52, 101 S.Ct. 2114, 68 L.Ed.2d 576 (1981).

Also pertinent in a preemption analysis in the context of admiralty law is the "saving to suitors" clause of the United States Code, which says:

> The district courts shall have original jurisdiction, exclusive of the courts of the States, of:
>
> (1) Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled.

28 U.S.C. § 1333(1). The United States Supreme Court explained the import of the admiralty clause and the "saving to suitors" clause in *American Dredging*: "[S]tate courts 'may not provide a remedy in rem for any cause of action within the admiralty jurisdiction.' " 510 U.S. at 446, 114 S.Ct. 981 (quoting *Red Cross Line v. Atlantic Fruit Co.*, 264 U.S. 109, 124, 44 S.Ct. 274, 68 L.Ed. 582 (1924)). Although state and federal courts have concurrent jurisdiction over *in personam* maritime causes of action, *see Offshore Logistics, Inc. v. Tallentire*, 477 U.S. 207, 222, 106 S.Ct. 2485, 91 L.Ed.2d 174 (1986), when a state court exercises *in personam* jurisdiction, it may adopt remedies " 'so long as it does not attempt to make changes in the "substantive maritime law." ' " *American Dredging*, 510 U.S. at 447, 114 S.Ct. 981 (quoting *Madruga v. Superior Court of Cal., County of San Diego*, 346 U.S. 556, 561, 74 S.Ct. 298, 98 L.Ed. 290 (1954) (quoting *Red Cross Line*, 264 U.S. at 124, 44 S.Ct. 274)). In *American Dredging*, the Supreme Court relied on *Southern Pacific Co. v. Jensen*, 244 U.S. 205, 37 S.Ct. 524, 61 L.Ed. 1086 (1917), for the guiding principle in a preemption analysis under admiralty law. State law may not provide a remedy that " 'works material prejudice to the characteristic features of the general maritime law or interferes with the proper harmony and uniformity of that law in its international and interstate relations.' " *American Dredging*, 510 U.S. at 447, 114 S.Ct. 981 (quoting *Jensen*, 244 U.S. at 216, 37 S.Ct. 524).

Justice Stevens, in his concurring opinion in *American Dredging*, criticized the Court's continued reliance on *Jensen* and what he termed "an extension of the patchwork maritime pre-emption doctrine" that he would "jettison." *Id.* at 460, 461, 114 S.Ct. 981 (Stevens, J.,

concurring). Justice Stevens contended that in maritime cases, just as in cases that did not touch upon maritime law, courts "should not lightly conclude that the federal law of the sea pre-empts a duly enacted state statute." *Id.* at 461, 37 S.Ct. 524 (Stevens, J., concurring) (citing *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 516, 112 S.Ct. 2608, 120 L.Ed.2d 407 (1992)). He would instead focus on whether a state provision at issue "conflicts with some particular substantive rule of federal statutory or common law, or, perhaps, whether federal maritime rules, while not directly inconsistent, so pervade the subject as to preclude application of state law." *Id.* (Stevens, J., concurring). In response to Justice Stevens's criticism, a majority of the Court explained that it relied on *Jensen* in deciding the case before it (*American Dredging*) because the parties and the Solicitor General had relied on *Jensen*, and the Court found it "inappropriate to overrule *Jensen* in dictum, and without argument or even invitation." *Id.* at 447 n.1, 37 S.Ct. 524.

We cannot predict whether the actual holding in *Jensen* may be overruled at some point by the Unites [sic] States Supreme Court and if so, whether the Supreme Court would nevertheless continue to analyze preemption questions arising in the context of maritime law by determining whether the state law at issue concerns "a 'characteristic feature' of admiralty or a doctrine whose uniform application is necessary to maintain the 'proper harmony' of maritime law." *Id.* at 447, 37 S.Ct. 524. However, for the reasons considered below, we conclude that regardless of whether we apply the Jensen parameters or those suggested by Justice Stevens, state-law claims such

as those asserted by Stier are impliedly preempted by section 688(b) and general federal maritime law.

IV

Providing a remedy to an injured seaman is a "characteristic feature [ ]" of admiralty. *See Southern Pac. Co. v. Jensen*, 244 U.S. 205, 216, 37 S.Ct. 524, 61 L.Ed. 1086 (1917). Under a *Jensen* analysis, the only issue with which we are concerned in this case is whether uniform application of federal law to claims by a foreign, nonresident seamen who was injured in the territorial waters of another nation while working in the offshore exploration industry is necessary to maintain the "proper harmony" of maritime law or to prevent "material prejudice to the characteristic features" of maritime law. *See id.; American Dredging Co. v. Miller*, 510 U.S. 443, 447, 114 S.Ct. 981, 127 L.Ed.2d 285 (1994). Alternatively, if we utilize the type of implied preemption analysis that has been applied in non-maritime cases, we must determine whether the scope of section 688(b) indicates that Congress intended federal law to occupy the field exclusively or whether the extension of state-law remedies to a foreign seaman such as Stier is in actual conflict with the intent of Congress. *See Freightliner Corp. v. Myrick*, 514 U.S. 280, 287, 115 S.Ct. 1483, 131 L.Ed.2d 385 (1995) (citing *English v. General Elec. Co.*, 496 U.S. 72, 78-79, 110 S.Ct. 2270, 110 L.Ed.2d 65 (1990)). In determining congressional intent, we look at the structure and purpose of the statute as a whole not only as revealed in the text "but [also] through the reviewing court's reasoned understanding of the way in which Congress intended the statute and its surrounding regulatory scheme to affect business, consumers, and the

law." *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 486, 116 S.Ct. 2240, 135 L.Ed.2d 700 (1996).

Congress has created a uniform plan of maritime tort law by means of the *Jones Act*, 46 U.S.C. app. § 688, and the Death on the High Seas Act (DOHSA), 46 U.S.C. app. §§ 761-67. *See generally Miles v. Apex Marine Corp.*, 498 U.S. 19, 37, 111 S.Ct. 317, 112 L.Ed.2d 275 (1990). The United States Supreme Court has recognized that although a body of court-made general federal maritime law also exists, Congress "retains superior authority in these matters" and that courts exercising admiralty jurisdiction "must be vigilant not to overstep the well-considered boundaries imposed by federal legislation." *Id.* at 27, 111 S.Ct. 317.

Cognizant of these limitations, federal courts have supplemented gaps in statutory maritime law with general maritime law, but only when that court-made law did not go beyond congressional intent. *See id.* at 31, 111 S.Ct. 317 (explaining the history and rationale of *Moragne v. States Marine Lines, Inc.*, 398 U.S. 375, 90 S.Ct. 1772, 26 L.Ed.2d 339 (1970)); *see also Moragne*, 398 U.S. at 409, 90 S.Ct. 1772 (creating a federal maritime cause of action for wrongful death in territorial waters based on unseaworthiness). Federal courts have also looked at times to state law to supplement federal maritime law. *See Miles*, 498 U.S. at 33-34, 111 S.Ct. 317. But the United States Supreme Court has held that when Congress has expressly or implicitly limited remedies available under maritime law, neither state statutes, state common law, nor general federal maritime law can enlarge those remedies. *See Offshore Logistics, Inc. v. Tallentire*, 477 U.S. 207, 232, 106 S.Ct. 2485, 91 L.Ed.2d 174 (1986) (holding

that nonpecuniary damages under state law are unavailable because DOHSA limits damages to pecuniary losses); *Mobil Oil Corp. v. Higginbotham*, 436 U.S. 618, 623-24, 98 S.Ct. 2010, 56 L.Ed.2d 581 (1978) (holding that damages for loss of society were unavailable under general maritime law because DOHSA precludes damages for loss of society).

The historical interplay between federal maritime law and state law was considered in some detail in *Yamaha Motor Corp. U.S.A. v. Calhoun*. *See* 516 U.S. 199, 206-16, 116 S.Ct. 619, 133 L.Ed.2d 578 (1996). The principles delineated in that decision control the disposition of Stier's claims in this case. The court explained in *Yamaha* that a state's remedial scheme "might be 'more generous than federal law' but nevertheless could apply" if Congress had expressed no concern " 'about a disparity between adequate federal benefits and *superior* state benefits.' " *Id.* at 215, 116 S.Ct. 619 (quoting from *Sun Ship, Inc. v. Pennsylvania*, 447 U.S. 715, 100 S.Ct. 2432, 65 L.Ed.2d 458 (1980)). But when "Congress has prescribed a comprehensive tort recovery regime to be uniformly applied, there is, we have generally recognized, no cause for enlargement" of statutory remedies. *Id.*

In *Yamaha*, a twelve-year-old girl was killed in the territorial waters of Puerto Rico when the jet ski she was riding slammed into the side of a ship. In the products liability litigation that ensued against the jet ski manufacturer, the issue before the court was whether the judge-declared federal maritime wrongful-death cause of action recognized in *Moragne*, *see* 398 U.S. at 409, 90 S.Ct. 1772, for unseaworthiness displaced remedies available under a state wrongful death statute, including loss of society

and loss of support. *See Yamaha*, 516 U.S. at 202-03, 116 S.Ct. 619. The United States Supreme Court held that because the young woman who was killed was not a seaman, a longshore worker, or a person otherwise engaged in a maritime trade, the Congressional intent to limit the remedies of those workers did not apply to her. *See id.* at 205 n.2, 215, 116 S.Ct. 619. Accordingly, state-law remedies were available to her survivors. *See id.* at 215-16, 116 S.Ct. 619. Further, the injury in *Yamaha* occurred in the territorial waters of the United States. The Supreme Court construed DOHSA[3] to "stop[ ] DOHSA from displacing state law in territorial waters." *Id.* at 216, 116 S.Ct. 619. What is important about *Yamaha* to our analysis of this case is that the Supreme Court explained that when Congress *has* prescribed remedies, the states may not expand them. *See id.* at 215, 116 S.Ct. 619.

In the case before us, there is a comprehensive tort recovery regime in place that governs claims such as the one Stier asserts. And in enacting section 688(b), Congress expressly voiced its concerns about the availability of remedies under our domestic laws to workers like Stier. The legislative history of section 688(b) explained why foreign nationals in the offshore exploration industry should be required to first determine whether they have a remedy under the laws of the country in whose waters they were injured or the country in which they resided or were a citizen before asserting the remedies

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[3] Section 767 of DOHSA provides: "The provisions of any State statute giving or regulating rights of action or remedies for death shall not be affected by this chapter." 46 U.S.C. app. § 767.

provided by the Jones Act, DOHSA, or the general maritime laws of the United States. As discussed above, the House Report concluded that there were fundamental distinctions between workers in the offshore exploration industry and seamen who worked aboard blue-water vessels. *See* H.R.REP. NO. 97-863, at 4 (1982). The report observed that offshore exploration operations generally occurred at sites on the continental shelf or within the territorial waters of a single nation. Offshore vessels did not tend to traverse the open seas or the waters of many different nations. *Id.*

Congress clearly outlined the objectives of section 688(b). As discussed in more detail above, they included uniform application of the law to foreign national offshore workers; reduction of insurance and legal costs of United States companies associated with the need to defend in and to obtain liability coverage in two countries; reduction of court congestion in the United States; curtailment of the undue extension of laws of the United States to other sovereign nations; and the placement of foreign workers in the offshore exploration industry on the same footing as their shoreside counterparts. *See id.* at 3-4.

None of these objectives of section 688(b) could have been achieved if Congress had intended to leave a void that states were free to fill. Indeed, all of the evils the House Report identified would remain. And some, such as forum shopping and the export of American law to other sovereign nations, would be magnified if section 688(b) did not implicitly preempt states from granting a greater remedy to foreign workers than they could obtain under federal law. As we recognized in *Exxon Corp. v.*

Choo, the burden placed on international maritime commerce is an important consideration in a preemption analysis:

> The impact on international and interstate maritime commerce is an important consideration when determining whether the essential features of exclusive federal jurisdiction are unduly burdened.

881 S.W.2d 301, 306 (Tex.1994) (citing *Pacific Merchant Shipping Ass'n v. Aubry,* 918 F.2d 1409, 1425 (9th Cir. 1990)).

Stier's position would lead to anomalous results that Congress never intended. If the states are free to extend the full panoply of remedies under their laws to foreign workers such as Stier, in many instances a foreign worker will be able to recover damages that a resident American seaman could not. A state's wrongful death laws could allow the survivors of a foreign worker to recover non-pecuniary losses such as loss of society when a United States citizen injured in the same locale could not. Non-pecuniary damages are not available to the dependents of United States seamen. *See Miles v. Apex Marine Corp.,* 498 U.S. 19, 32, 111 S.Ct. 317, 112 L.Ed.2d 275 (1990). Similarly, the survivors of a foreign worker could recover lost future earnings as damages under some state laws, while the survivors of a U.S. seaman killed in the same locale could not. *Id.* at 33, 111 S.Ct. 317. This is directly contrary to the intent of the Jones Act and to general maritime law principles. *See id.* at 32, 111 S.Ct. 317; *see also Yamaha Motor Corp. U.S.A. v. Calhoun,* 516 U.S. 199, 215, 116 S.Ct. 619, 133 L.Ed.2d 578 (1996).

In conducting an implied preemption analysis, we must recognize that Congress has not withdrawn from the oversight of personal injury actions brought by foreign offshore workers. To the contrary, through section 688(b), Congress has extended the preemption it had previously asserted over claims arising under section 688(a). In section 688(b), Congress made the determination that access by foreign nationals such as Stier to remedies under section 688(a) and any other United States law is available upon a showing that there is no remedy under the law of the site of the injury or of the nation in which the foreign worker is a citizen or resides. *See* 46 U.S.C. app. § 688(b). State courts are not free to ignore this requirement. There is no room for state law to provide a greater remedy when the grant of that remedy would be contrary to the intent of Congress.

V

We have found only three decisions that directly address the issue before us today. In *Coto v. J. Ray McDermott, S.A.*, 709 So. 2d 1023, 1029 (La. App. 1998), a Louisiana intermediate appellate court analyzed in some detail the history of the Jones Act and the legislative history of section 688(b) and held that claims such as those urged by Stier are preempted. The same court reached the same conclusion in *Bolan v. Tidewater, Inc. See* 709 So. 2d 1059, 1061 (La. App. 1998).

A Texas court of appeals has also held that section 688(b) preempts Texas state-law negligence claims of a foreign seaman who was injured on a mobile drilling

platform located off the shore of another nation. *See Lawrenson v. Global Marine, Inc.*, 869 S.W.2d 519, 524-25 (Tex. App. – Texarkana 1993, writ denied). The court in *Lawrenson* concluded that the seaman had a remedy under the laws of the United Kingdom, where he was a citizen, and accordingly, that he could not maintain his Texas-law claims. *See id.* at 526; *see also Jackson v. S.P. Leasing Corp.*, 774 S.W.2d 673, 678 (Tex. App. – Texarkana 1989, writ denied) (holding that section 688(b) preempted the state-law claims of a foreign seaman who was injured aboard an American-owned tugboat in the territorial waters of Mexico).

Stier relies on the Fifth Circuit's decision in *Camejo v. Ocean Drilling & Exploration*, 838 F.2d 1374 (5th Cir. 1988), but that case did not consider the question presented by Stier's appeal. The only issue in *Camejo* with regard to state-law claims was whether the district court should have remanded them to state court instead of dismissing them under *forum non conveniens*. *See id.* at 1375. Whether section 688(b) preempted state-law claims was not considered. The only preemption issue in *Camejo* was whether states are bound to apply federal *forum non conveniens* law. *See id.* at 1382. *Camejo*'s conclusion was that they are, which we now know to have been an erroneous holding. *See American Dredging Co. v. Miller*, 510 U.S. 443, 114 S.Ct. 981, 127 L.Ed.2d 285 (1994) (holding that states may apply their own laws of *forum non conveniens* in admiralty matters); *Exxon Corp. v. Choo*, 881 S.W.2d 301, 306 (Tex.1994) (holding that federal maritime doctrine of *forum non conveniens* did not preempt the application of Texas *forum non conveniens* law).

Congress has prescribed the remedies available to foreign seafarers such as Stier. They must first look to the laws of the nation in which they were injured or the laws of the nation in which they are citizens or are domiciled. Remedies under section 688(b) are available only if no remedy is available under those foreign laws.

VI

Stier contends that pursuant to a choice of law provision in his employment agreement with Reading & Bates Drilling Co., the parties agreed to be bound by Texas law, and therefore, he is entitled by contract to assert his tort claims for personal injury under the substantive laws of Texas. The contractual provision on which Stier relies provides in its entirety:

> This agreement shall be interpreted and enforced in accordance with the laws of the State of Texas, U.S.A. In the event any section of this contract or any part of any section is found to be void, or of no legal effect, by the final decision of a court of competent jurisdiction, [Stier] and [Reading & Bates] agree that such Section, or part of any Section, is severable from the balance of this Contract and that the remainder of this Contract shall remain in full force and effect.

This provision, by its terms, applies only to the interpretation and enforcement of the contractual agreement. It does not purport to encompass all disputes between the parties or to encompass tort claims. The claims that Stier asserts arise under Texas tort law. His claims do not rise

or fall on the "interpret[ation] and enforce[ment]" of any contractual provision.

Stier also contends that Reading & Bates failed to provide a safe place for him to work and that this duty is derived from his contract. But that claim, like all of his claims, sounds in tort and does not concern the interpretation or enforcement of his contract. We held in *Exxon Corp. v. Tidwell* that an employer's duty to provide a safe workplace is generally derived from agency principles. 867 S.W.2d 19, 21 (Tex.1993). An example serves to illustrate the distinction between the interpretation of a contract and the breach of an employer's duty to provide a safe work place. Suppose that Stier were a resident of Illinois and his employment agreement provided that it was to be governed by the laws of Illinois. And assume that during a visit to Reading & Bates's offices in Texas, Stier slipped and fell on its premises because of an unreasonably dangerous condition that was known to his employer. We would not say that Illinois law applied to Stier's tort claim.

Further, the agreement does not purport to override federal law by affirmatively granting remedies greater than those available under federal law. Even were we to construe the agreement as requiring the application of Texas tort law, it would still be necessary to determine whether the remedy sought was available under Texas law or whether that remedy was foreclosed by paramount federal law. For example, the fact that Texas law governs the rights and obligations of an employer and employee does not mean that Texas worker's compensation remedies would be available if those remedies are inconsistent with federal law. Simply providing in an

agreement that Texas law will govern that agreement is not the equivalent of agreeing that the employer will provide tort remedies greater than those allowed under federal law.

Because Stier's employment agreement does not grant any specific or even general Texas tort law remedies, we do not reach the question of whether section 688(b) would preempt a contractual provision that expressly stated that specific remedies were available to a foreign seaman in addition to those available under federal law. Likewise, we do not reach the question of whether the choice of Texas law in Stier's agreement means that Texas choice-of-law principles would also apply such that there must be a determination of whether Texas law or the law of Trinidad governs Stier's claims. Under the facts of this case, we agree with the implicit holdings of the trial court and the court of appeals that Stier's state-law claims are preempted notwithstanding the provision in his employment agreement.

VII

It does not follow, however, that Stier's claims under Trinidad law are preempted. To the contrary, section 688(b) first directs Stier to the laws of Trinidad, Germany, or Brazil for a remedy. *See* 46 U.S.C. app. § 688(b). The only question is whether state courts may entertain claims based on the laws of another nation in light of section 688(b). Although there is some indication in the House Committee Report that section 688(b) was intended to bar any access to state and federal courts

unless there was no other remedy,[4] the sounder reading of section 688(b), at least with regard to its impact on state courts, is that it is a choice-of-law provision. To the extent that *Jackson v. S.P. Leasing Corp.*, 774 S.W.2d 673 (Tex. App. – Texarkana 1989, writ denied), indicates that section 688(b) limits the jurisdiction of state courts, it is disapproved.

We recognize that if a state court were to adjudicate the merits of a foreign offshore worker's claims under the laws of another nation, at least some of the objectives articulated by the House Committee in adding section

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[4] The House Committee on Merchant Marine and Fisheries wrote in its committee report that the Jones Act amendment

> merely requires that an injured foreign worker utilize his foreign remedy *before seeking relief in a U.S. court.*
>
> The Committee finds that the proposed legislation does not abridge the fundamental right to be compensated for a work-related injury; it merely requires that the worker utilize administrative and judicial remedies available in his own nation or the host nation *before seeking relief in the U.S. court system.*
>
> Numerous Federal and State statutes restrict access to various U.S. courts. For example, workman's compensation systems usually require a worker to have his claim determined by a compensation board rather than a court.
>
> Just as a workman's compensation system can constitutionally require the utilization of an administrative agency, Congress by this legislation will require that nonresident workers utilize the administrative and judicial systems of the nation with the greater contact and interest in the incident giving rise to that worker's claim.

H.R.REP. NO. 97-863, at 7 (1982) (emphasis added).

688(b) to the Jones Act would not be fully achieved. For example, companies may still perceive the need to have insurance coverage for defense costs in more than one forum, and court congestion from foreign workers' claims will not be entirely eliminated. However, as noted above, the United States Supreme Court held in *American Dredging Co. v. Miller,* that in maritime cases, states may apply their own *forum non conveniens* laws. 510 U.S. 443, 457, 114 S.Ct. 981, 127 L.Ed.2d 285 (1994). State *forum non conveniens* laws are not a " 'characteristic feature' " of admiralty law and do not interfere with the " 'proper harmony' " of maritime law. *American Dredging,* 510 U.S. at 447, 114 S.Ct. 981 (quoting *Southern Pac. Co. v. Jensen,* 244 U.S. 205, 216, 37 S.Ct. 524, 61 L.Ed. 1086 (1917)); *see also Exxon Corp. v. Choo,* 881 S.W.2d 301, 306 (Tex.1994). It follows that if a state chooses to entertain the claims of a seaman based on the laws of another nation, that exercise of jurisdiction is not preempted.

In remanding Stier's claim to the trial court, we express no opinion on whether section 71.031 of the Texas Civil Practice and Remedies Code applies to admiralty matters. *See* TEX. CIV. PRAC. & REM.CODE § 71.031. We hold only that the trial court is not preempted from deciding whether *forum non conveniens* applies and if so, whether his claims based on Trinidad law should proceed in a Texas court.

* * *

For the reasons set forth above, we affirm the judgment of the court of appeals in part, reverse in part, and remand the Trinidad-law claims to the trial court for further disposition.

Justice O'NEILL did not participate in the decision.

Justice BAKER, filed a dissenting opinion, in which Justice HANKINSON and Justice GONZALES joined.

Justice BAKER, joined by Justice HANKINSON and Justice GONZALES, dissenting.

Because the Court holds that the Jones Act preempts Stier's state law claims, I dissent.

I. THE COURT'S OPINION

The Court holds that the Jones Act preempts Stier's state law claims. But section 688(b) only prohibits actions under section 688(a) of the Jones Act or any other maritime law of the United States. Section 688(b) does not say anything about state tort laws, state procedural laws, or the availability of state courts as a forum, even for foreign law claims.

Nevertheless, the Court reaches the result it wants by avoiding a plain reading of the statute. The Court relies instead on implied preemption and the United States Supreme Court's opinion in *Southern Pac. Co. v. Jensen*, 244 U.S. 205, 37 S.Ct. 524, 61 L.Ed. 1086 (1917). To do so relies more on "sinking sand" than "solid ground." Even the Court that issued *Jensen* did not unanimously accept *Jensen*'s rationale – witness Justice Holmes' vigorous dissent. *See Jensen*, 244 U.S. at 218-233, 37 S.Ct. 524. And, *Jensen*'s efficacy has been downhill ever since, culminating in *American Dredging*. *See American Dredging*, 510 U.S. 443, 447 n.1, 114 S.Ct. 981, 127 L.Ed.2d 285 (1994); *see also P.C. Pfeiffer Co. v. Ford*, 444 U.S. 69, 73 n.2, 100 S.Ct. 328, 62 L.Ed.2d 225 (1979); *Kossick v. United Fruit Co.*, 365 U.S. 731, 742, 81 S.Ct. 886, 6 L.Ed.2d 56 (1961) (Frankfurter, J.,

dissenting); *Maryland Cas. Co. v. Cushing*, 347 U.S. 409, 429, 74 S.Ct. 608, 98 L.Ed. 806 (1954) (Black, J., dissenting); *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 516, 67 S.Ct. 839, 91 L.Ed. 1055 (1947) (Black, J., dissenting). In *American Dredging*, the United States Supreme Court explained that it relied on *Jensen* only because the parties had done so, and that the Court did not want to overrule *Jensen* "in dictum, and without argument or even invitation." *American Dredging*, 510 U.S. at 447 n.1, 114 S.Ct. 981. Here, neither Reading & Bates nor Stier so much as cite *Jensen* in their briefs. Moreover, the Court acknowledges that the principles delineated in *Yamaha v. Calhoun* control the disposition of Stier's claims. *See Yamaha Motor Corp. v. Calhoun*, 516 U.S. 199, 116 S.Ct. 619, 133 L.Ed.2d 578 (1996). Yet, *Yamaha*, the United States Supreme Court's latest maritime federalism opinion, does not even cite *Jensen*. *See Yamaha Motor Corp. v. Calhoun*, 516 U.S. at 199, 116 S.Ct. 619. A noted commentator sums up *Jensen*'s worth:

> In times like these it takes a particularly admirable kind of hard- headedness to claim . . . that *Jensen* is still our best guide to the applicability of state law in Maritime cases. In fact, *Jensen* has never been a good guide, and today is completely discredited. Anyone who places serious reliance on any of its teachings is as likely to be fooled as enlightened.

See Robertson, *The Applicability of State Law in Maritime Cases After* Yamaha Motor Corp. v. Calhoun, 21 TUL. MAR. L.J. 81, 89 (1996).

To bolster its implied-preemption analysis, the Court relies on legislative history. But section 688(b)'s

legislative history is "sparse and confusing" and does not unequivocally support the Court's holding. *See Vaz Borralho v. Keydril Co.*, 710 F.2d 207, 210 (5th Cir. 1983); see also Robertson & Speck, *Access to State Courts in Transnational Personal Injury Cases: Forum Non Conveniens and Antitrust Injunctions*, 68 TEX. L.REV. 937, 947 n.56 (1990). Moreover, the Court's reliance on it to foreclose Stier's state claims but not his Trinidadian claims in state court is incongruous. As the Court admits, the legislative history that it cites to support preemption of state law claims would similarly support preemption of foreign law claims in U.S. courts. In addition, the cases the Court cites hold that 688(b) preempts foreign as well as state claims in U.S. courts. *See Lawrenson v. Global Marine, Inc.*, 869 S.W.2d 519, 526 (Tex. App. – Texarkana 1993, writ denied); *Coto v. J. Ray McDermott, S.A.*, 709 So. 2d 1023, 1027 (La. App.1998); *Bolan v. Tidewater, Inc.*, 709 So. 2d 1059, 1061 (La. App.1998).

II. APPLICABLE LAW

Preemption is an affirmative defense. A party seeking summary judgment based on preemption has the burden to show preemption as a matter of law. *See Kiefer v. Continental Airlines, Inc.*, 882 S.W.2d 496, 497-98 (Tex. App. – Houston [1 st Dist.] 1994), *aff'd*, 920 S.W.2d 274 (Tex.1996). Maritime preemption analysis is quite similar, if not identical, to general federal preemption analysis. *See Calhoun v. Yamaha Motor Corp.*, 40 F.3d 622, 629 (3rd Cir. 1994), *aff'd*, 516 U.S. at 199, 116 S.Ct. 619. A federal law may expressly or impliedly preempt state law. *See Freightliner Corp. v. Myrick*, 514 U.S. 280, 286-87, 115 S.Ct. 1483, 131 L.Ed.2d 385 (1995); *Askew v. American Waterways*

Operators, Inc., 411 U.S. 325, 341, 93 S.Ct. 1590, 36 L.Ed.2d 280 (1973); *Hyundai Motor Co. v. Alvarado*, 974 S.W.2d 1, 4 (Tex.1998). In determining whether there is express preemption, we narrowly construe preemption clauses, and without an express claim-preemption provision, we presume that there is no preemption. *See Hyundai*, 974 S.W.2d at 5; *Moore*, 889 S.W.2d at 250. Federal maritime law impliedly preempts state law when Congress intended that federal law occupy the field or when there is an actual conflict between state and federal law. *See Calhoun*, 40 F.3d at 629. Federal maritime law does not impliedly preempt state law in areas of the law in which there is no comprehensive Congressional scheme. *See Yamaha*, 516 U.S. at 215, 116 S.Ct. 619. Further, federal maritime claims preempt state remedies only when federal maritime law applies and is invoked. *See De La Lastra*, 852 S.W.2d at 916, 919.

III. ANALYSIS

While section 688(b) precludes federal claims for certain foreign seamen like Stier, nothing in section 688(b) preempts state substantive tort law claims or prohibits state procedural law from allowing a state forum for foreign claims. Such claims do not fall within section 688(b)'s preclusion of section 688(a) claims or claims under "any other maritime law of the United States" by certain foreign seamen. *See Camejo v. Ocean Drilling & Exploration*, 838 F.2d 1374, 1376 (5th Cir. 1988). Nor does section 688(b) impliedly preempt any state or foreign law claims Stier may have. If federal maritime law does not

apply or is unavailable, federal maritime law cannot preempt whatever state law might apply. *See De La Lastra*, 852 S.W.2d at 919.

Reading & Bates mischaracterizes the Jones Act as a comprehensive Congressional scheme providing a limited remedy for foreign workers, apparently in an attempt to contrast the lack of a comprehensive Congressional scheme for "nonseafarers" noted in *Yamaha*. *See Yamaha*, 516 U.S. at 215, 116 S.Ct. 619. But the Jones Act does not prescribe a comprehensive tort recovery regime for foreign workers. Instead, it expressly contemplates that some foreign workers injured in foreign waters can still bring federal maritime claims, either because they are not employed by companies engaged in certain enterprises or because they lack a remedy under the law of other jurisdictions. *See* 46 U.S.C. § 688(b)(1)(A) & (b)(2). Thus, section 688(b) is not particularly concerned about ensuring uniformity or avoiding inconsistent results. Nor does section 688(b) evince any concern about the actual availability or convenience of other forums in which to assert alternative remedies.

IV. CONCLUSION

Because the Jones Act does not preempt state substantive and procedural law in this case, I would hold that Stier is free to pursue any state and foreign law claims in state court under state procedural law. Because such claims are not preempted as a matter of law, I would reverse the court of appeals' judgment and remand the cause to the trial court for further proceedings.

Because the Court holds to the contrary, I respectfully dissent.

Hans-Henning STIER, Appellant

v.

READING & BATES CORPORATION and
Reading & Bates Drilling Co., Appellees

No. 14-95-00192-CV.

Court of Appeals of Texas, Houston (14th Dist.).

Aug. 29, 1996.

On Appeal from the 80th District Court Harris County, Texas Trial Court Cause No. 94-04197.

Before YATES, EDELMAN and O'NEILL, JJ.

OPINION

YATES, Justice.

Appellant, Hans-Henning Stier, appeals from a take-nothing summary judgment in favor of appellees, Reading & Bates Drilling Company and its parent, Reading & Bates Corporation (collectively "Reading & Bates"). In four points of error, Stier contends the trial court erred in granting summary judgment on the grounds that his claims were preempted by the Jones Act.[1] We affirm.

Stier, a German citizen and a resident of Brazil, was injured in an accident while working as a mechanic on a mobile offshore drilling vessel in the territorial waters of Trinidad. Stier was employed by Houston-based Reading & Bates at the time of the accident. Stier filed suit in Harris County to recover damages for his injuries, alleging that Reading & Bates was negligent in the following

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[1] 46 U.S.C.A. § 688 (West Supp. 1996).

respects: (1) failing to provide a safe work environment; (2) failing to keep the vessel in a seaworthy condition; and (3) failing to sufficiently staff the vessel. Stier invoked the jurisdiction of the Texas district court under the Jones Act and the general maritime law of the United States; the statutory and common-law of the State of Texas; and, in the alternative, under the laws of the country of Trinidad.

Reading & Bates moved for summary judgment, claiming that all of Stier's claims were precluded and preempted by Section 688(b) of the Jones Act. The trial court agreed and granted summary judgment. Stier filed a Motion for New Trial, which the trial court denied.

In four points of error, Stier argues that the trial court erred in granting summary judgment because the Jones Act neither preempts his claims under Texas law or Trinidad law, nor preempts the choice of law provision in his employment contract. Stier does not assert that summary judgment was improper as to his claims under the Jones Act and general maritime law. Therefore, the only issues before this court are: (1) whether the Jones Act preempts Stier's personal injury claims under Texas or Trinidad law; and (2) whether the choice of law provision in Stier's employment contract governs the substantive law applied to these facts.

Section 688(a) of the Jones Act permits a seaman who is a permanent resident alien or U.S. citizen and who suffers a personal injury in the course of his employment to bring an action for damages at law in the same manner as a railway employee. 46 U.S.C.A. app. § 688(a) (West Supp. 1996). State and federal courts have concurrent

jurisdiction over personal injury claims under the Jones Act. *American Dredging Co. v. Miller,* 114 S.Ct. 981, 984 (1994).

Section 688(b) of the Jones Act expressly precludes a non-resident alien from maintaining a cause of action under the Jones Act or under general maritime law if he has a remedy in his home or host nation and was injured as follows:

> (A) while that person was in the employ of an enterprise engaged in the exploration, development, or production of off-shore mineral or energy resources – including but not limited to drilling, mapping, surveying, diving, pipe-laying, maintaining, repairing, constructing, or transporting supplies, equipment or personnel, but not including transporting those resources by a vessel constructed or adapted primarily to carry oil in bulk in the cargo spaces; and
>
> (B) in the territorial waters or waters overlaying the continental shelf of a nation other than the United States, its territories, or possessions.

46 U.S.C.A. § 688(b).

Stier contends that Section 688(b) removes a non-resident alien offshore worker from seaman status, and thus, precludes an injured non-resident alien offshore worker from seeking relief under the Jones Act or general maritime law. Because no federal remedy is available, he argues, the injured nonseaman may seek a state or foreign law remedy in state court.

We disagree. Section 688(b) denies a Jones Act remedy and a remedy under general maritime law to any person employed in the offshore drilling industry who is

not a U.S. citizen or permanent resident alien when they are injured in another country's territorial waters, unless neither the country where the injury occurred nor the injured worker's home country provide a remedy. 42 U.S.C.A. § 688(b) (emphasis added). Thus, Section 688(b) applies regardless of Stier's status as a seaman.

Further, the question before this court today, namely, whether Stier can maintain his state or foreign law claims despite the language in Section 688(b), has been answered adversely to Stier in *Jackson v. S.P. Leasing Corp.*, 774 S.W.2d 673, 678 (Tex. App. – Texarkana 1989, writ denied) and in *Lawrenson v. Global Marine, Inc.*, 869 S.W.2d 519, 524-26 (Tex. App. – Texarkana 1993, writ denied). We disagree with Stier's assertion that these cases were wrongly decided.

When a seaman alleges negligence against an employer because of an injury during the course of his employment, the Jones Act preempts state and common law causes of action. *Lawrenson*, 869 S.W.2d at 524. Moreover, because the Jones Act preempts substantive state law, a Texas state court cannot apply substantive foreign law, even if otherwise applicable, under the Texas Open Forum Act.[2] *Jackson*, 774 S.W.2d at 678. Thus, if properly invoked, as in this case, the Jones Act precludes a seaman

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[2] The Texas Open Forum Act permits a nonresident alien to seek relief in Texas courts for personal injuries that take place in a foreign country if certain conditions are met, however, the Act further provides that Texas courts will apply the substantive law appropriate under the facts of the case. TEX. CIV. PRAC. & REM. CODE ANN. § 71.031 (Vernon 1986). The facts in this case place Stier within the ambit of the Jones Act.

who fails to meet the conditions of Section 688(b) from bringing a negligence claim against his employer in the United States. To hold otherwise would be to defeat Congress' intent in amending the Jones Act, namely, to curtail forum shopping by foreign plaintiffs. *Id.* at 675.

In this case, the record reflects that Stier is a seaman whose claim fell within Section 688(b) of the Jones Act, and that Stier properly invoked the Jones Act in his original pleading. Therefore, Stier has no state or foreign remedy in a state court because the Jones Act preempts any state or foreign remedy that might have otherwise been available. The trial court did not err in granting summary judgment. Points of error one, two and three are overruled.

Stier next asserts that Texas law, and not the Jones Act, governs his personal injury claim against Reading & Bates because a choice of law clause in his employment contract provides that Texas law governs the interpretation and enforcement of the employment agreement. Regardless of whether the choice of law clause in Stier's contract applies to a personal injury or breach of contract claim, Stier's argument is without merit.

Texas law recognizes that substantive federal maritime law has preemptive force over state law. *Exxon Corp. v. Choo,* 881 S.W.2d 301, 304 (Tex. 1994). Thus, Stier cannot avoid the preemptive effect of the Jones Act by claiming that Texas law applies. Apart from the Jones Act when properly invoked, Texas does not recognize a common-law or statutory cause of action for personal injuries sustained by a foreign seamen during the course of his employment and brought against his employer. *Jackson,*

774 S.W.2d at 678. Because the only remedy that the State of Texas recognizes in this case is the Jones Act, and the Jones Act does not provide Stier with a remedy for his injuries, the trial court did not err in granting summary judgment. Stier's fourth point of error is overruled.

Accordingly, the judgment of the court below is affirmed.

CAUSE NO. 94-04197

HANS-HENNING STIER	§ IN THE DISTRICT COURT
V.	§
	§
READING & BATES CORPORATION AND READING & BATES DRILLING CO.	§ OF HARRIS COUNTY, § TEXAS
	§
	§ 80TH JUDICIAL DISTRICT

JUDGMENT

On this day came on for consideration Defendants Reading & Bates Corporation's and Reading & Bates Drilling Co.'s Amended Motion for Summary Judgment. The Court, having reviewed the Defendants' Motion, the Plaintiff's Response, the Defendants' Reply and the other pleadings on file herein, finds that the Defendants are entitled to summary judgment on the grounds that all of Plaintiff's claims are preempted by the Jones Act, 46 U.S.C. Section 688(b). It is accordingly,

ORDERED, ADJUDGED and DECREED that this Court's October 14, 1994 Order Granting Summary Judgment in this cause is hereby withdrawn. It is further

ORDERED, ADJUDGED and DECREED that Defendants Reading & Bates Corporation and Reading & Bates Drilling Co.'s Amended Motion for Summary Judgment dismissing all of Plaintiff's claims is hereby granted on the grounds that all of Plaintiff's claims are preempted by the Jones Act, 46 U.S.C. section 688(b). It is further

ORDERED, ADJUDGED and DECREED that Plaintiff Hans-Henning Stier do have and take nothing against Defendants Reading & Bates Corporation and Reading &

Bates Drilling Co. All costs of Court incurred by these Defendants are to be taxed against the Plaintiff Hans-Henning Stier. All relief requested and not expressly granted is denied.

SIGNED this 27 day of October, 1994.

/s/ Judge Scott Link
Judge Presiding

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THE SUPREME COURT OF TEXAS

Orders Pronounced July 1, 1999

* * *

ORDER ON MOTIONS

THE FOLLOWING MOTIONS FOR REHEARING OF CAUSES ARE OVERRULED:

96-1165 HANS-HENNING STIER v. READING & BATES CORPORATION and READING & BATES DRILLING COMPANY; from Harris County; 14th district (14-93[sic]-00192-CV, ___ SW2D ___, 08-29-96)

2 motions for rehearing

(Justice O'Neill not sitting)

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HOUSE OF REPRESENTATIVES

97TH CONGRESS
2d Session

REPORT
No. 97-863

RECOVERY OF DAMAGES BY FOREIGN SEAMEN

SEPTEMBER 23, 1982. – Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

MR. JONES of North Carolina, from the Committee on Merchant Marine and Fisheries, submitted the following

REPORT

[To accompany H.R. 4863]

[Including cost estimate of the Congressional Budget Office]

The Committee on Merchant Marine and Fisheries, to whom was referred the bill (H.R. 4863) to modify the maritime laws applicable to the recovery of damages by certain foreign seamen, having considered the same, report favorably thereon with amendments and recommended that the bill as amended do pass.

The amendments are as follows:

On page 2, line 10, insert ", equipment," after "supplies".

On page 2, line 24, strike "under the laws of the country –" and insert "either –".

On page 3, line 1, insert "under the laws of the nation" before "asserting".

On page 3, line 3, insert "under the laws of the nation" before "in which,".

On page 3, after line 5, add the following new sections:

SEC. 2. The amendment made by section 1 of this Act does not apply to any action arising out of an incident that occurred before the effective date of this Act.

SEC. 3. (a) Upon each departure of an offshore supply vessel of the United States, as defined in section 4426a of Title 52 of the Revised Statutes, from a port of the United States, its territories, or possessions, bound for the territorial waters or waters overlying the continental shelf of a nation other than the United States, its territories, or possessions, all of the crew of that vessel, including licensed officers, shall be citizens of the United States. If such a vessel while on a foreign voyage is for any reason deprived of the services of any member of the crew, that position or the vacancy caused by the promotion of another to that position may be filled by a person other than a citizen of the United States until the first call of the vessel at a port in the United States: *Provided, however,* That the position or vacancy may not be filled by a person other than a citizen of the United States within thirty days of the last departure of the vessel from a port of the United States.

(b) This section applies to the maximum extent possible not inconsistent with any statute, regulation, requirement, policy, or practice of the nation asserting jurisdiction over the waters in which the vessel is operating.

(c) This section becomes effective on April 1, 1983.

Purpose of the Legislation

The purpose of the bill is to amend section 33 of the Merchant Marine Act of 1920 (Jones Act), as well as the other maritime laws of the United States, so as to establish uniform procedural rules governing suits brought under U.S. maritime law by certain foreign nationals injured while working over the continental shelf of a foreign nation. The legislation addresses the situation where a foreign worker, injured in the territorial waters or over the continental shelf of a nation other than the United States, seeks legal relief in the courts of the U.S. The legislation provides that a suit may not be maintained in that situation under U.S. law unless the injured party has no remedy in either his country of citizenship or nationality or the country exercising jurisdiction over the waters where the incident giving rise to the injury occurred.

Background and Need for the Legislation

A basic tenet of tort law is that the rights and remedies of an injured party are governed by the laws of the place of injury. The maritime industry, unlike most business activities, does not have a constant and local site

of operations. Merchant vessels pass through the territorial waters and come under the legal jurisdiction of any number of different nations. Congress and the courts have long recognized the limitations of applying the "place of injury" concept to the traditional maritime industry; hence, the more constant law of the flag has been held to govern most maritime torts.[1]

Since 1798, the Federal Government has recognized that the unique status of seamen and the special circumstances of their employment require additional protections not available to U.S. citizens generally. Beginning in 1915, Congress enacted a number of bills designed to ensure the compensation of a merchant seaman injured or killed during the course of his employment. The right of a seaman to seek redress for an injury suffered during the course of his employment is assured by section 33 of the Merchant Marine Act of 1920 (Jones Act).[2] The Death on the High Seas Act[3] provides for the recovery of damages for the negligent death of a spouse, parent, child, or dependent relative.

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[1] The law of the flag has been disregarded by the courts where flags of convenience vessels are utilized or where there is a finding that the center of operations is in the United States. (See *Lauritzen v. Larsen*, 345 U.S. 571 (at 587).) "It is common knowledge that in recent years a practice has grown, particularly among American shipowners to avoid stringent shipping laws by seeking foreign registration eagerly offered by some countries. Confronted with such operation, our courts on occasion have pressed beyond the formalities of more or less nominal registration to enforce against American ship owners the obligations which our law place upon them".

[2] 46 U.S.C. 688

[3] 46 U.S.C. 761-767

For years, the Federal courts have attempted to delineate the scope of coverage of section 33 of the Jones Act. The courts have examined whether Jones Act remedies are available to a foreign worker on board a U.S. flag vessel, to an American seaman on a foreign-owned vessel, to a foreign seaman on a foreign-flag vessel owned by U.S. interests, etc.

In recent years, a number of our courts have entertained suits under the Jones Act by foreign offshore workers injured while working above the Outer Continental Shelf of a foreign nation.[4] This approach has not been accepted by all Federal courts, however. As a result, the determination as to whether it is appropriate to commence a suit in the United States depends not on the statutory right granted by the Jones Act but rather on the happenstance of where the suit is instituted or which district judge hears the case. The Committee finds that this lack of uniform treatment is unjustified and unreasonable.

The present state of the law, as applied to the offshore oil and mineral industry, increases the cost of operation of U.S. companies due to higher insurance and legal costs associated with the need to obtain liability coverage to defend an action in two countries (the host country

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[4] In *Findlay v. Sedco Inc.* (case No. 79-51884, 157 District Court, Harris County, Texas), the representative of a British citizen injured on a rig in Canadian waters recovered $400,000 in a death on the high seas action. In *Colin, James Salt v. Sedco* (Civil Action No. B-76-147-CA. U.S. District Court Eastern District Texas), a Spanish citizen injured on a rig in Spanish waters recovered $350,000 in a Jones Act suit. *Contra Chicazor v. Transworld Drilling Co. Ltd.*, 648 F.2d 1015 (1981).

and the United States).[5] Insurance premiums are also increased because of the possibility of higher recovery in the United States.[6]

Lawsuits brought by foreign offshore workers not only substantially increase the insurance and litigation costs of U.S. companies but may also increase court congestion. The economic impact of these cases and the demand on court resources can be seen from the following information obtained by the Committee:

On October 29, 1981, 82 cases against 14 offshore companies were pending. These cases involved a potential liability of approximately $85 million.

A single law firm has filed suits claiming damages of $2 billion on behalf of 167 persons killed in the collapse of the Alexander Kielland drilling rig in the North Sea.

Congress, in enacting the Jones Act, was interested in assuring that an injured American seaman not be relegated to an unfamiliar foreign court. In recent years,

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[5] See *Castanto v. Jodsen Marine and Castcanto v. Brown & Root Ltd.*, Weekly Law Reports 833 July 18, 1980.

[6] See testimony of Frank J. Defini, Vice President for American International Underwriters, at the February 25, 1982 Merchant Marine Subcommittee hearing. "The current environment which allows foreign seamen direct access to the Jones Act and U.S. maritime remedies has a direct impact on insurance rates and premiums. This results in increased costs to the insurance buyer: in this case, the American offshore oil and gas industry operating overseas * * * For the U.S. employer, there is the additional cost to insure for the contingency of Jones Act suits by foreign national workers, in addition to the local benefits and remedies available in the relating foreign jurisdictions."

however, U.S. courts have interpreted the Jones Act to include foreign seamen employed on U.S. vessels. The courts have cited various justifications for this inclusion – such as the difficulty for a foreign seaman to obtain jurisdiction in a foreign court over a U.S. corporation; the possibility that a court at the place of injury would not entertain the suit; the total dependence of the seaman on his employer's agent (the master) during the course of employment; and that, when examined from a conflicts of law approach, the U.S. has the most substantial contact with the occurrence and the greatest interest in assuring compensation of the injured party.

In the case of an offshore oil worker, the above conditions do not exist. The activity is localized, with most workers never leaving their own national waters. U.S. companies operating on a foreign Outer Continental Shelf are subject to the jurisdiction of that nation's courts and are bound by whatever other conditions are set by the nation granting permission to operate in those waters. The offshore worker is not totally dependent on the will of the vessel master for long periods of time. U.S. contacts with this type of occurrence are generally insignificant (frequently, the only U.S. connection is the corporate stock ownership of the subsidiary that owns or operates the offshore facility). Finally, there is another nation with a greater interest in regulating the conduct in question.

Discussion

H.R. 4863 will establish a jurisdictional rule for individuals whose activities, duties, and status do not readily fall within the traditional concept of "seaman". The

worker in the offshore petroleum industry is not engaged in a maritime activity that takes him into waters controlled by a number of different nations or no nation. Rather, he is involved in an activity under the clear jurisdiction of one nation. In light of this relationship, the place of injury is an appropriate forum in which to seek redress. The rationale underlying the application of the "law of the flag" to maritime workers does not exist for foreign offshore energy production workers whose activities are closely related to land-based petroleum technology and are not of a true maritime nature.[7]

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[7] It has been suggested by some courts that the extension of Jones Act coverage to foreign workers may be a violation of the defendant's right to procedural due process (see *DeMateos v. Texaco*, 562 F.2895 (3 Cir 1977).)

> The Jones Act and the Death on the High Seas Act are written in language so broad as to apply to any seaman on any vessel of any nation at any location on the globe. Obviously, however, the due process clause of the Fifth Amendment places bounds upon Congressional efforts to apply American rules of decision to transactions in which the United States has no sufficient interest. Even if we assume that Texaco, Inc.'s ownership of the stock of TEXPAN is a sufficient American contact to justify for due process purposes, the application of American law to TEXPAN's Panamanian employees (a dubious assumption), we do not think Congress in enacting the Jones Act and the Death on the High Seas Act, intended that result.

The *DeMateos* case related to a Liberian vessel owned by U.S. interests where a seaman died while on a voyage between Honduras and Costa Rica. The Committee's citation of this decision does not indicate an agreement with the decision not to extend Jones Act coverage to a seaman injured on a U.S.-owned flag of convenience vessel.

The legislation will place the offshore nonmaritime worker in the same legal position as his shoreside counterpart. There will be no unfairness to the offshore worker, since he can still bring suit in the place where he has chosen to live or work. Trial at the place of injury will ensure greater ease of access to sources of proof, proximity of potential witnesses, and ability to join additional parties who are not subject to suit in the U.S. The bill should discourage forum shopping and decrease U.S. court expenses and backlogs.

SCOPE OF THE LEGISLATION

The legislation applies only to the tort remedies provided in section 33 of the Jones Act and under the maritime laws of the United States and has no impact on criminal contractual, or other types of actions which could have a relationship to offshore resource development.

H.R. 4863 covers a party injured as a result of an incident on a foreign Outer Continental Shelf (this can be either the person who actually suffered the physical injury giving rise to the Jones Act suit or his legal representative or survivor) who seeks damages or maintenance and cure under the Jones Act or other maritime law of the United States. The legislation requires the claimant to show that at the time the U.S. action was commenced he had no remedy under either the laws of the nation asserting jurisdiction over the area in which the incident occurred or the nation in which the injured worker maintained citizenship or residency. A U.S. national who brings a suit as the representative or survivor of a foreign

injured worker would still have to show that he (the U.S. national) lacked a remedy in the nation of citizenship or residency of the injured worker, and in the nation exercising jurisdiction over the place of injury.

The courts, in interpreting the Jones Act, have generally given a broad interpretation to the phase "seaman who shall suffer personal injury during the course of his employment". Hence, a worker performing nonmaritime functions (such as the ship's cook) falls within the scope of the Jones Act. Similarly, an injury sustained on board a vessel by an offduty seaman has been held to be a recognizable Jones Act claim.

H.R. 4863 extends only to workers injured while engaged in the "exploration, development, and production of offshore mineral or energy resources" – and should be given the same broad interpretation as section 33 of the Jones Act. The test is whether the worker is employed on an offshore vessel or facility engaged in "one of the activities enumerated in section (b) (1) (A), not whether he – at the precise moment of the injury – was involved in one of the enumerated activities.

The legislation does not preclude a suit prosecuted under U.S. Law for injuries suffered on a vessel or other offshore facility that is moving to another offshore site beyond the waters overlying the continental shelf of the host nation in whose waters it was originally operating.

The term "remedy" includes funds available under the laws of the nations described in paragraph (b) (2) for a worker, or his survivors, for a work-related injury or death. Such a remedy may be in the form of an award by a court or administrative agency; an award as a matter of

law, regulations, or legally recognized practice; or any other legal method by which a nation, or its political subdivisions, assures that funds are recovered by an injured worker or his survivors. A voluntary decision not to seek an available remedy in the nations described in paragraph (b) (2) will not result in U.S. maritime tort law being applicable so [sic] the person who refused to pursue an available remedy.

ALTERNATIVE REMEDIES

Based on three days of hearings, it is clear that the nations granting offshore oil or mineral exploration rights have procedures to compensate a worker injured in an offshore operation. Those nations not having such procedures can establish programs and require U.S. companies operating off their coast to participate in these programs.

Though it seems unlikely that a foreign worker would not have a remedy available in either his home nation or the nation exercising jurisdiction over the place of injury, the legislation provides that if this should occur, the worker would not be prevented by this Act from bringing a Jones Act suit in the United States.

The Committee cannot evaluate whether any given country grants an adequate remedy to its injured citizens; however, the Committee recognizes the paramount interest of a coastal jurisdiction in regulating conduct occurring in adjacent waters. In fact, the Government of Newfoundland – in the aftermath of the OCEAN RANGER disaster – decided to provide greater relief for the families of those who perished. The United States

should not sit in judgment as to the adequacy of such foreign remedies.

Just as the Outer Continental Shelf Lands Act (OCSLA)[8] recognizes the interest of the Federal Government and coastal states in operations being conducted on the U.S. Outer Continental Shelf, H.R. 4863 recognizes the strong interest of foreign nations in regulating conduct occurring within their sovereign territory and directs that U.S. courts should not entertain maritime-based suits brought by foreign workers injured on another nation's Outer Continental Shelf except when no remedy is available to those workers.

IMPACT ON EMPLOYMENT RATIOS

Representatives of organized labor expressed concern to the Committee that H.R. 4863 would encourage

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[8] Congress in enacting the Outer Continental Shelf Lands Act Amendments recognized the interest of coastal jurisdictions in regulating conduct occurring in the adjacent OCS by providing that the "civil and criminal laws of each adjacent State (now in effect or hereafter adopted, amended, or repealed) are declared to be the law of the United States for that portion of the subsoil and seabed of the Outer Continental Shelf . . . which would be within the area of the state if its boundaries were extended seaward to the outer margin of the OCS (46 U.S.C. 1183 (a)(2)(A)". This same statute recognizes the authority of the Federal Government to regulate remedies available to workers employed on the U.S. Outer Continental Shelf by providing that the compensation schemes set up by the Longshoremen's and Harbor Workers' Compensation Act shall apply to offshore workers injured in Federal waters (46 U.S.C. 1882(b)).

increased hiring of foreign nationals by American offshore operators. The Committee has carefully examined this issue and is convinced that passage of this legislation will not have an adverse impact on overseas job opportunities for United States citizens. U.S. companies are usually required to hire foreign nationals by the country granting the leasehold. The policy of encouraging hiring of the host nation's citizens is followed in the United States and the Committee has received no information to refute testimony that these foreign hiring requirements are the main factors leading to the increased employment of foreign nationals.

The Committee is also persuaded that offshore companies will continue to seek out U.S. workers because of their greater training and skills. Increases in the hiring of foreign nationals are attributable to tax law changes which discouraged U.S. workers from seeking jobs in foreign offshore operations, and to the increased hiring requirements of host nations.

SUPPLY VESSEL MANNING

The legislation imposes a special manning requirement for U.S.-flag offshore supply vessels. The Committee recognizes the need to assure employment opportunities in the offshore industry for merchant seamen. The legislation specifically provides that this provision will not apply if there exists a conflict between the manning requirements imposed by this legislation and the requirements of a host nation.

U.S. TREATY OBLIGATIONS

The United States has entered into numerous treaties of friendship, commerce, and navigation with other nations. These treaties generally include "access" provisions assuring that foreign nationals will have "free and open access to the courts" of the United States. The Supreme Court has found that, while this type of provision grants procedural rights, it "does not define substantive rights but leaves them to be ascertained by the law governing the courts and administered and enforced in them". *Majorano v. Baltimore and Ohio Railroad,* 213 U.S. 268. The courts have generally found that the substantive rights granted by the Jones Act do not extend to foreign nationals who lack sufficient contacts with the United States. These court decisions are not a denial of equal access but rather a determination of lack of standing. The decisions generally hold that the litigant has no right which can be enforced in a U.S. court. H.R. 4863 codifies this case law and clarifies that the substantive rights granted by the Jones Act do not extend to foreign offshore workers.

The legislation is in accord with customary international law and international agreements in that it recognizes the rights of a nation to regulate activity within its territorial waters and in the Outer Continental Shelf adjacent to the coast of that nation. The present situation whereby domestic United States law is applied to actions and occurrences within the jurisdiction of a sovereign foreign nation is an unwarranted application and extraterritorial extension of U.S. law and not in accord with our treaties of friendship and navigation.

CONSTITUTIONAL ISSUES

During the hearings on H.R. 4863, some witnesses raised various issues related to the Constitutionality of this legislation. There was concern that the legislation might deny equal protection to aliens or violate the due process clause of the Constitution.

The courts, in applying the "due process" and "equal protection" clauses, have been concerned with protecting the fundamental rights of aliens. Clearly, if the proposed legislation denied resident aliens the right to recover damages merely because of their status as non-citizens, the legislation would violate the basic fairness concept embodied in the Bill of Rights. However, the proposed legislation merely requires that an injured foreign worker utilize his foreign remedy before seeking relief in a U.S. court.

The Committee finds that the proposed legislation does not abridge the fundamental right to be compensated for a work-related injury; it merely requires that the worker utilize administrative and judicial remedies available in his own nation or the host nation before seeking relief in the U.S. court system.

Numerous Federal and State statutes restrict access to various U.S. courts. For example, workman's compensation systems usually require a worker to have his claim determined by a compensation board rather than a court.

Just as a workman's compensation system can constitutionally require the utilization of an administrative agency, Congress by this legislation will require that non-resident workers utilize the administrative and judicial

system of the nation with the greater contact and interest in the incident giving rise to that worker's claim.

The point has been made that the legislation discriminates against foreign nationals. The legislation does place a foreign national in a class apart from a U.S. citizen or resident alien who is injured in a foreign offshore operation. However, the mere creation of different classes does not violate the Constitution; it is only the creation of an irrational classification system that violates the equal protection clause. The different treatment of the foreign national is justified, since he has remedies in his home nation or the host nation which he may pursue. (If a worker lacks such remedies, section 2 of the bill provides that he would not be prohibited from bringing an action in U.S. courts.) The greater interest of the host nation or the home nation of the injured worker also justifies the different treatment of a foreign offshore worker.

Courts, in determining whether to exercise jurisdiction, will examine the forum's contacts with the event giving rise to a claim and the forum's interest in resolving the dispute. The Committee notes the greater contacts and interest of the United States in resolving disputes involving U.S. citizens. These factors also support the Committee's different treatment of U.S. citizens and residents.

As the Supreme Court stated in the landmark maritime case of *Lauritzen v. Larsen,* 345 U.S. 571 (1953) (at page 586): "Each nation has a legitimate interest that its nationals and permanent inhabitants be not maimed or disabled from self-support". The Committee recognizes the importance of assuring that U.S. citizens and resident

aliens are able to recover damages for an injury, and continues the Jones act coverage of U.S. citizens and permanent resident aliens injured in a foreign OCS accident.

Committee Action

H.R. 4863 was introduced by Mr. Biaggi of New York on October 29, 1981. Additional cosponsors are Mr. Breaux, Mr. Bowen, Mr. Davis, Mr. Emery, Mr. Fields, Mr. Forsythe, Mr. Hubbard, Mr. Lent, Mr. Livingston, Mr. Shaw, Mr. Shumway, Mr. Tauzin, Mr. Hutto and Mr. Patman.

Legislation addressing the status of foreign offshore workers under the Jones Act was introduced in the 96th Congress and was referred to the Merchant Marine and Fisheries Committee. The Merchant Marine Subcommittee held one day of hearings on the legislation and took no further action.

The current legislation was referred to the Merchant Marine and Fisheries Committee and subsequently to the Merchant Marine Subcommittee. H.R. 4863 was the subject of hearings before the Merchant Marine Subcommittee on February 25, 1982 and May 19, 1982. The Subcommittee also considered testimony presented at the Merchant Marine and Fisheries Committee hearing of March 9, 1982 on the collapse of the oil rig *Ocean Ranger.*

Witnesses at the Subcommittee hearing testifying in support of H.R. 4863 included: Paul L. Kelly, Corporate Vice President for Public Affairs of Zapata Corporation, representing the National Ocean Industries Association;

Charles A. Bedell, Legislative Counsel, International Association of Drilling Contractors; Arden J. Lea, Senior Counsel, International, McDermott, Inc.; Damon B. Bankston, President and Chief Executive Officer, Tidewater, Inc.; D. Michael Hughes, Executive Vice President, Oceaneering International, Inc.; Frank S. Meaney, Frank J. Defini, and Manuel A. Sequeira, Jr. of American International Underwriters Corporation.

The legislation was opposed by the Honorable Stephen A. Neary, Member, House of assembly and Chairman of Public Accounts of the Provinces of Newfoundland and Labrador; Odd Kristian Rem, Director, The *Alexander L. Kielland* Disaster-At-Sea Foundation; John R. Matzell, Esq., representing the Louisiana Trial Lawyers Association; Talmage Simpkins, Executive Director, AFL-CIO Maritime Committee; and C. Arthur Rutter, Jr. of the Association of Trial Lawyers of America. The Committee also received testimony in opposition from Benton Musslewhite and Leonard C. Jacques, attorneys involved in litigation of offshore injury cases.

The Committee solicited and received comments from the Departments of State, Transportation, and Justice. Of these agencies only the Department of State cannot support the legislation on the grounds that it "could lead to claims by countries with which the United States has treaties of friendship, navigation, and commerce that the United States is not living up to its commitments under those treaties".

The Merchant Marine Subcommittee favorably reported the legislation on August 8, 1982. The Subcommittee amended the legislation by increasing the manning

requirements for U.S.-flag offshore supply vessels from 75 percent of the crew to 100 percent. The Subcommittee amendment also provided that, should any vacancy occur within 30 days of a departure from U.S. port, that vacancy would be filled by a U.S. national.

The Merchant Marine and Fisheries Committee considered and favorably reported the legislation on August 19, 1982 by a vote of 22-8.

Section-by-Section Analysis

Section 1 amends section 20 of the 1915 Welfare of American Seamen Act (as amended by section 33 of the Merchant Marine Act of 1920 (Jones Act), 46 U.S.C. 688). It provides that lawsuits under the maritime laws of the United States may not be brought under certain circumstances. The actions excluded are those which:

(a) are brought by a person or his representative for an injury suffered by a worker who is neither a citizen nor a permanent resident alien of the United States;

(b) are brought under the Jones Act or other maritime law of the United States;

(c) seek recovery in the form of maintenance and/or damages for injury or death;

(d) arise out of an incident occurring while the person injured or killed was engaged in the exploration, development, or production of offshore mineral or energy resources; and

(e) occurred in the territorial waters or waters overlying the continental shelf of a nation other than the United States.

Section (b)(1)(A) specifically eliminates vessels engaged in the transportation of offshore resources from the Jones Act exclusion, since these vessels perform traditional ocean transport services. The term "transporting those resources by vessels" is not intended to extend to offshore supply vessels having on board minerals for use as fuel or supplies for an offshore facility, or one that is carrying liquid cargo in drums, barrels, or other packages. Offshore supply vessels sometime carry fuel from an onshore site to the offshore facility for use in offshore exploration, and carry oil samples from the offshore site to a coastal site. These activities are clearly related to offshore exploration and recovery and not commercial transportation in international commerce.

H.R. 4863 is aimed at actions based on an incident that occurs while a person is engaged in the exploration, development, or recovery of offshore resources. The Committee intends that the test created by this bill is whether the worker is employed on a vessel or facility engaged in activities enumerated in section (b)(1)(A), not whether the worker at the precise moment of the injury was involved in the enumerated activities.

Subsection (b)(2) permits an offshore worker covered by section 1 to bring an action under the Jones Act, after a showing that he has no remedy available in the nation asserting jurisdiction over the place of injury nor in his nation of residency or citizenship. The availability of a remedy s [sic] determined by whether or not a remedy is available at the time a legal action is commenced in the United States. A representative of a worker (for example, in a wrongful death action) would be able to bring an action in the United States if a remedy is not available to

that person in the nation asserting jurisdiction over the place of injury or in the nation of citizenship/residency of the injured worker.

Subsection (b)(2) and section 2 do not create any rights for a foreign seaman. They merely continue the present system under which a foreign offshore worker may seek a remedy under the Jones Act, but he must still prove that the suit is brought in an appropriate forum if there is a motion to dismiss for forum nonconveniens.

The possibility of a lower recovery overseas would not justify suit in the United States. If an injured foreign worker fails to utilize available foreign remedies: e.g., he fails to file his claim or allows an applicable statute of limitations to expire, or is denied a recovery after seeking a remedy, he would not be within the scope of (b)(2) since he had a method of seeking relief in one of the two nations included in section (b)(1).

Section 3 changes the manning requirements for offshore supply vessels. Under present law, 100 percent of the officers and 75 percent of the remaining crew must be U.S. citizens when the vessel leaves a U.S. port. Present law also provides that, if a vacancy occurs after the departure from the U.S. port, that vacancy may be filled by a foreign national until the vessel returns to a U.S. port where a replacement is available. Section 3 of the bill requires that, upon departure from a U.S. port, all the officers and crew shall be U.S. citizens and, if a vacancy occurs within 30 days of the date of last departure from a U.S. port, that vacancy must be filled by a U.S. citizen. If the vessel begins operating in a foreign OCS, this section will apply only to the extent it is not inconsistent with the

statutes, regulations, or other requirements of the nation having jurisdiction over the waters in which the vessel is operating.

Cost of the Legislation

Pursuant to clause 7(a) of rule XIII of the Rules of the House of Representatives, the committee estimates that enactment of H.R. 4863 will not result in any additional cost to the government.

Inflationary Impact Statement

Pursuant to clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that enactment of H.R. 4863 will have no inflationary impact on prices and costs in the operation of the national economy.

Compliance With Clause 2(1)(3) of Rule XI

With respect to the requirements of clause 2(1)(3) of rule XI of the Rules of the House of Representatives:

(A) No oversight findings or recommendations have been made with respect to the bill.

(B) The bill does not provide new budget authority or new or increased tax expenditures.

(C) The Committee has received no report from the Committee on Government Operations of oversight findings and recommendations under clause 4(c)(2) of rule X of the Rules of the House of Representatives.

(D) The Committee has been furnished a letter from the Director of the Congressional Budget Office with an estimate of costs, pursuant to section 403 of the Congressional Budget Act of 1974. The submission as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., September 16, 1982.

Hon. WALTER B. JONES,

Chairman, Committee on Merchant Marine and Fisheries, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Office has reviewed H.R. 4863, a bill to modify the maritime laws applicable to the recovery of damages by certain foreign seamen, as ordered reported by the House Committee on Merchant Marine and Fisheries, August 19, 1982.

This bill clarifies maritime tort procedure as it applies to foreign seamen. Based on review of the bill there should be no significant additional cost to the federal government as a result of this bill.

Should the committee so desire, we would be pleased to provide further details on the estimate.

Sincerely,

RAYMOND C. SCHEPPACH
(For Alice M. Rivlin, Director).

DEPARTMENTAL REPORTS

The Departments of Justice, Transportation, and State submitted reports to the Committee on the proposed legislation. Those reports follow herewith:

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, D.C. May 24, 1982.

Hon. WALTER B. JONES,

Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to your request, the Department of Justice has reviewed H.R. 4863, a bill "[t]o modify the maritime laws applicable to the recovery of damages by certain foreign seamen."

The Department of Justice interposes no objection to this legislation. However we defer to other Executive Branch agencies as to whether this legislation should be enacted.

The Office of Management and Budget has advised this Department that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

ROBERT A. MCCONNELL,
Assistant Attorney General,
Office of Legislative Affairs.

U.S. DEPARTMENT OF TRANSPORTATION,
Washington, D.C., May 27, 1982.

Hon. WALTER B. JONES,

Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Department of Transportation with respect to H.R. 4863, a bill "To modify the maritime

laws applicable to the recovery of damages by certain foreign seamen."

Section 20 of the Act of March 4, 1915 (46 U.S.C. § 688), commonly referred to as the Jones Act, authorizes suit in U.S. courts for injuries or death of seamen employed on vessels under U.S. jurisdiction. The Courts have given this Act a broad interpretation so that a substantial number of foreign seamen have been awarded damages for injuries sustained in offshore work while employed on a U.S.-owned vessel.

It would appear that H.R. 4863 is intended to address a problem created by the employment of foreign personnel on U.S.-flag oil production platforms in offshore areas under the jurisdiction of foreign countries. Most U.S. production platforms are outfitted in the United States and either proceed under their own power or are towed to the drilling site. While they are underway, they are "vessels" and must meet all Coast Guard manning standards. When they are in place, they cease to be vessels and become industrial sites, manned by drilling crews. Many times, these drilling crews are foreign naitonals [sic]. However, the courts have often classified these foreign nationals as "seamen" for purposes of suits under the Jones Act. Lawsuits brought in U.S. courts often result in recoveries far in excess of what a claimant could recover under the laws of other nations. These higher recoveries increase the costs of U.S. offshore operators, and place U.S. companies at an unnecessary competitive disadvantage.

H.R. 4863 would resolve this problem by amending the Jones Act to designate the existing provision of law as

subsection (a), and add a new subsection (b) that would severely limit such rights by foreign nationals. Pursuant to the bill, no action could be maintained under the Jones Act, or any other maritime law of the United States, for maintenance and cure or for damages for the injury or death of a person who is not a citizen or permanent resident alien of the United States when the incident occurred while that person was employed in the offshore mineral or energy industry, other than in the transportation of these resources by vessel, provided the incident occurred in the territorial waters or waters overlying the continental shelf of a foreign nation. However, in the event no remedy is available to such person under the laws of his own country or the country asserting jurisdiction over the area where the incident occurred, H.R. 4863 would authorize an action to be maintained in U.S. courts under the Jones Act.

The Department of Transportation supports reasonable measures to ensure the cost of competitiveness of U.S. industry. H.R. 4863 would appear to be an excellent bill on which to hold hearings with respect to this problem concerning foreign nationals employed by the U.S. mineral and oil industry. During the course of such hearings, your Committee may wish to address the following issues:

a. Whether H.R. 4863, as introduced, would encourage the displacement of U.S. seamen by foreign nationals from such employment with the U.S. mineral and oil industry. While this Department favors the general intent of the proposed legislation, we would be opposed to the use of this legislation as a vehicle to arbitrarily displace U.S. seamen from such employment.

b. Whether H.R. 4863, as introduced, is inconsistent with our existing treaty obligations. The United States is a party to a number of treaties of Friendship, Commerce and Navigation which may be inconsistent with this bill.

This Department defers to the Department of State with respect to this issue.

c. Finally, whether H.R. 4863, as introduced, would conflict with the Convention concerning the Liability of the Shipowner in Case of Sickness, Injury or Death of Seamen (T.S. 951, 54 Stat. 1693, October 24, 1936). Article 11 of that Convention pledges all signatories to ensure equality of treatment under the law for all seamen, irrespective of nationality, domicile or race, (54 Stat. 1700). This Department defers to the Department of State with respect to this issue.

The Office of Management and Budget advises that, from the standpoint of the administration's program, there is no objection to the submission of this report for the consideration of the Committee.

Sincerely,

JOHN M. FOWLER,
General Counsel.

DEPARTMENT OF STATE,
Washington, D.C., June 8, 1982.

Hon. WALTER B. JONES,

Chairman, Committee on Merchant Marine and Fisheries, House of Representatives

DEAR MR. CHAIRMAN: In response to your letter of November 2, the Department of State has reservations

concerning the advisability of enacting H.R. 4863. Enactment of this legislation could lead to claims by countries with which the United States has treaties of friendship, commerce and navigation that the United States is not living up to its commitments under those treaties.

U.S. treaties of friendship, commerce and navigation typically require both parties to accord to nationals and companies of either party "national treatment and most-favored-nation treatment with respect to access to the courts of justice and to administrative tribunals and agencies within the territories of the other Party, in all degrees of jurisdiction, both in pursuit and in defense of their rights." *E.g.*, Treaty of Friendship, Commerce and Navigation between the United States and Japan ["US-Japanese Treaty"]. April 2, 1953, Art. IV (1), 4 U.S.T. 2063, T.I.A.S. No. 2863. *See also* Treaty of Friendship, Commerce and Navigation between the United States and the Federal Republic of Germany ["US-German Treaty"], October 29, 1954, Art. VI(1), 7 U.S.T. 1839, T.I.A.S. No. 3593 (which accords national treatment, but not most-favored-nation treatment). "National treatment" is typically defined as treatment "upon terms no less favorable than the treatment accorded . . . in like situations, to nationals, companies, products, vessels or other objects . . . of such Party." *E.g.*, US-Japanese Treaty, Art. XXII (1): US-German Treaty, Art. XXV (1).

The provisions of H.R. 4863, although carefully limiting the circumstances and manner in which nonresident aliens are treated less favorably than US citizens and resident aliens could nonetheless give rise to claims by US treaty partners that the United States is not providing the national treatment in terms of access to US courts

generally required by our treaties of friendship, commerce and navigation. It is also conceivable that enactment of H.R. 4863 would lead to a limited retaliation against the ability of US nationals to bring actions seeking recovery for the injury or death of a US seaman in the courts of our treaty partners, especially in situations where the US seamen is engaged in the exploration, development, or production of offshore mineral or energy resources.

For the above reasons, the Department of State cannot support the enactment of this piece of legislation.

The Office of Management and Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report.

With cordial regards.

Sincerely,

POWELL A. MOORE,
Assistant Secretary for Congressional Relations.

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, as amended, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic, existing law in which no changes proposed is shown in roman):

ACT OF MARCH 4, 1915

SEC. 20(*a*). That any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the

right of trial by jury, and in such action all statutes of the United States modifying or extending the common law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located.

(b)(1) No action may be maintained under subsection (a) or under any other maritime law if [sic] *the United States for maintenance and cure or for damages for the injury or death of a person who was not a citizen or permanent resident alien of the United States at the time of the incident giving rise to the action, if the incident occurred –*

> *(A) while that person was engaged in the exploration, development, or production of offshore mineral or energy resources – including drilling, transporting supplies, equipment, or personnel, mapping, surveying, diving, pipelaying, maintaining, repairing, or constructing, but not including transporting those resources by vessel; and*
>
> *(B) in the territorial waters or waters overlying the continental shelf of a nation other than the United States, its territories, or possessions. As used in this paragraph, the term continental shelf has the meaning stated in article I of the 1958 Convention on the Continental Shelf.*

(2) Notwithstanding paragraph (1) of this subsection, an action may be maintained if the person bringing the action establishes that, at the time of the commencement of the action in the United States, no remedy was available to that person either –

> *(A) under the laws of the nation asserting jurisdiction over the area in which the incident occurred; or*
>
> *(B) under the laws of the nation in which, at the time of the incident, the person for whose injury or death a remedy is sought maintained citizenship or residency.*

RECOVERY OF DAMAGES BY FOREIGN SEAMEN

Mr. BIAGGI. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4863) to modify the maritime laws applicable to the recovery of damages by certain foreign seamen, as amended.

The Clerk read as follows:

H.R. 4863

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That section 20 of the Act of March 4, 1915 (38 Stat. 1185), as amended (46 U.S.C. 688), is amended –

(a) by redesignating that section as section 20(a); and

(b) by adding at the end thereof the following new subsection:

"(b)(1) No action may be maintained under subsection (a) or under any other maritime law of the United States for maintenance and cure or for damages for the injury or death of a person who was not a citizen or permanent resident alien of the United States at the time of the incident giving rise to the action, if the incident occurred –

"(A) while that person was engaged in the exploration, development, or production of offshore mineral or energy resources – including drilling, transporting supplies, equipment, or personnel, mapping, surveying, diving, pipelaying, maintaining, repairing, or constructing, but not including transporting those resources by vessel; and

"(B) in the territorial waters or waters overlying the continental shelf of a nation other than the United States, its territories, of [sic] possessions. As used in this paragraph, the term 'continental shelf' has the meaning stated in article I of the 1958 Convention on the Continental Shelf.

"(2) Notwithstanding paragraph (1) of this subsection, an action may be maintained if the person bringing the action establishes that, at the time of the commencement of the action in the United States, no remedy was available to that person either –

"(A) under the laws of the nation asserting jurisdiction over the area in which the incident occurred; or

"(B) under the laws of the nation in which, at the time of the incident, the person for whose injury or death a remedy is sought maintained citizenship or residency."

SEC. 2. The amendment made by section 1 of this Act does not apply to any action arising out of an incident that occurred before the effective date of this Act.

SEC. 3. (a) Upon each departure of an offshore supply vessel of the United States as defined in section 4426a of title 52 of the Revised Statutes, from a port of the United States, its territories, or possessions, bound for the territorial waters or waters overlying the continental shelf of a nation other than the United States, its territories, or possessions, all of the crew of that vessel, including licensed officers, shall be citizens of the United States. If such a vessel while on a foreign voyage is for any reason deprived of the services of any member of the crew, that position or the vacancy caused by the promotion of

another to that position may be filled by a person other than a citizen of the United States until the first call of the vessel at a port in the United States: *Provided, however,* That the position or vacancy may not be filled by a person other than a citizen of the United States within thirty days of the last departure of the vessel from a port of the United States.

(b) This section applies to the maximum extent possible not inconsistent with any statute, regulation, requirement, policy or practice of the nation asserting jurisdiction over the waters in which the vessel is operating.

(c) This section becomes effective on April 1, 1983.

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from New York (Mr. BIAGGI) will be recognized for 20 minutes, and the gentleman from Kentucky (Mr. SNYDER) will be recognized for 20 minutes.

The Chair recognizes the gentleman from New York (Mr. BIAGGI).

Mr. BIAGGI. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, today the House considers H.R. 4863 – legislation that will modify the rights of certain workers under the Merchant Marine Act of 1920, known as the Jones Act.

Congress has long recognized that it would be arbitrary and unfair to force a U.S. seaman – injured while employed on a U.S.-owned vessel – to sue in a foreign

nation merely because the injury occurred while the vessel was passing through the waters of that foreign nation.

The Jones Act protects injured American seamen by giving them a right to sue in the United States – regardless of where their injury occurs. The courts have interpreted the law to also apply to foreign seamen injured on U.S.-owned vessels – regardless of factors such as the flag of the vessel or the place of injury.

H.R. 4863, as reported by the Merchant Marine and Fisheries Committee, would limit maritime suits by foreign nationals injured while engaged in certain activities related to the exploration for – or recovery of – oil, gas, or other minerals in the coastal waters adjacent to a foreign nation.

In recent years, a substantial number of foreign offshore workers – injured while working in waters under the jurisdiction of a foreign nation – have commenced lawsuits against U.S. companies in our courts based on the theory that they are seamen covered under the Jones Act and other maritime laws.

Most court decisions have held that a foreign offshore worker injured on a foreign Continental Shelf should not bring his action in a U.S. court – unless he lacks a remedy in the host nation or his home nation. H.R. 4863 will codify this judicial precedent.

I emphasize that this legislation does not usurp a legitimate court prerogative but rather, it codifies the precedents already established by the courts.

There is abundant justification for treating the offshore worker differently from his counterpart engaged in international commerce.

Workers engaged in offshore activities along the coast of a foreign nation differ materially from traditional seamen in that offshore workers have a forum close to the site of the injury where they can assert their claim for compensation. They generally lack the close contact with the United States that warrants granting traditional seamen almost unchallenged access to the U.S. court system.

The worker in the offshore petroleum industry is not engaged in a maritime activity that takes him into waters controlled by a number of different nations or no nation. Rather, he is involved in an activity under the clear jurisdiction of one nation.

In light of this relationship, the place of injury is an appropriate forum in which to seek redress. The justification for applying the "Law to the Flag" to maritime workers does not exist for foreign offshore energy production workers whose activities are more closely related to land-based petroleum technology.

Members should also be aware that the offshore worker can still bring suit in the place where he has chosen to live or work. Additionally, if an injured worker has no remedy in either of these jurisdictions, he could still seek relief in the United States under the Jones Act.

Enactment of this legislation will not affect existing legal remedies of the traditional merchant seaman employed on U.S.-flag vessels or U.S. beneficially owned vessels – nor will it affect existing legal remedies of

American citizens or permanent resident aliens employed in the offshore oil and gas industry.

This Legislation recognizes that other nations may have established programs to protect the interests of their workers and citizens – and that the existence of those programs would serve as a bar to litigation under the Jones Act.

If, however, there are no programs to compensate workers or their survivors for work-related injuries, the injured party would still be allowed to utilize the Jones Act to gain access to the Federal courts.

This bill has been attacked as one that will hurt American workers. It has been argued that it will result in an incentive for the offshore oil and mineral industry to hire foreign workers instead of American workers. If I thought the bill would have that effect, I would be vigorously opposing it instead of supporting it.

Two days of hearings and extensive discussions, research, and review of a great deal of submitted material produced no evidence to support the contention that the bill would adversely affect American workers in any way. In fact, the evidence suggests the contrary.

Enactment of the bill should make our American companies more competitive with foreign companies. If, as a result, they win more contracts, they will hire more Americans. That is the result we all desire.

I, therefore, support the bill and urge all Members to join me in doing so.

Mr. SNYDER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 4863. As my colleague from New York (Mr. BIAGGI) has already explained, this bill would require a foreign seaman injured while engaged in offshore drilling activity in waters of a foreign country to first pursue whatever legal remedy is available to him through the country in whose jurisdiction he was injured or in the country in which he is a citizen or resident before he comes to the U.S. judicial system. If there is a remedy available to him through a foreign jurisdiction, then he is precluded from instituting an action in the U.S. courts. However, if the injured party can show that there is no remedy available to him in either the country where the accident occurred, or his place of citizenship or residence, then he would be permitted to pursue his legal action in U.S. courts.

In recent years there has been a substantial number of cases instituted in the United States involving injuries sustained in foreign waters which appear to have little or no relationship with the United States. However, some courts have held that mere U.S. corporate ownership of a drilling activity may be enough to permit a lawsuit by a foreign seaman to proceed. Consequently, there has been an uncertain and confusing case law development regarding the offshore industry. H.R. 4863 is an attempt to establish a uniform approach to considering suits brought by foreign workers injured over the Outer Continental Shelf of a foreign nation.

Let me stress that this bill only addresses those injuries suffered above the Outer Continental Shelf of foreign nations and is not intended to alter rights presently enjoyed by workers injured while working over the Outer Continental Shelf of the United States.

This bill will not result in an increase in cost to the Federal Government and should, in fact, result in some decrease in expenses related to our now overburdened court system. The administration does not object to passage of this bill, and I urge my colleagues to vote for it.

Mr. BIAGGI. Mr. Speaker, I yield such time as he may consume to the gentleman from California (Mr. PHILLIP BURTON).

Mr. PHILLIP BURTON. Mr. Speaker, I find myself in a very unique position today. Regrettably, I must rise in opposition to the bill. I think it is going to have an adverse effect on the hiring of American workers in this sphere of activity.

At a time when record numbers of Americans are out of work, we should be doing everything in our power to encourage companies to hire American workers. This bill will provide incentives for the oil companies to hire cheap foreign labor at the expense of American workers. It would be clearly more profitable for the oil companies to hire foreign workers who cannot sue in U.S. courts. We cannot afford to pass this legislation which will put more Americans out of work.

Mr. BIAGGI. Mr. Speaker, I yield 3 minutes to the gentleman from Louisiana (Mr. BREAUX).

Mr. BREAUX. Mr. Speaker, I would like to commend the chairman of the subcommittee who has worked tirelessly on this legislation, as well as the ranking minority member who has been very helpful in trying to come up with a plan that makes sense.

Do you know what we are talking about? It is quite simple. We are saying to foreign seamen who work for U.S. companies that if they are injured, that if they have a remedy in their own country, if they have a court remedy in their own country for the injury that they have received, that they have to first pursue that remedy in their own country. That is not a novel, unusual approach. It makes sense. It is logical. We are not telling them that they cannot have access to U.S. courts. They can have access to our courts if they have no remedy available in their own country.

Mr. SNYDER. Mr. Speaker, will the gentleman yield?

Mr. BREAUX. I am glad to yield.

Mr. SYNDER. The gentleman is correct, except that the gentleman did not go quite far enough. That foreign worker has to be injured in foreign waters.

Mr. BREAUX. That is also correct. It is even stronger than that. If the foreign worker is injured in the U.S. waters, he has a remedy just as if he were a U.S. seaman.

I think the basic opposition we have had on this, not surprisingly, comes from plaintiffs' lawyers who have had a field day transporting injured foreign seamen to U.S. courts so they can file suits in the U.S. courts, when they have a remedy that is completely and totally available to them in their own courts.

The bill before the House, H.R. 4863, which amends the Merchant Marine Act of 1920, known as the Jones Act, has been the subject of too much ill-informed discussion. In strongly supporting this legislation, I would like to set

the record straight as to what this bill does and does not do.

As my good friend and colleague, the distinguished chairman of the Merchant Marine Subcommittee, Mr. BIAGGI, has explained, the provisions of the Merchant Marine Act of 1920 addressed by H.R. 4863 provide special litigation rights for traditional "blue water" merchant seamen. The thrust of the congressional effort in 1920 was to provide a forum for such merchant seamen who were injured while plying their trade on the oceans of the world, where no one nation could assert jurisdiction.

Unfortunately, over the years, a combination of court expansions of original congressional intent and the development of a whole new industry, never envisioned by the original authors of the Jones Act, have resulted in an inequity which we seek to redress today. All this bill does is recognize the difference between traditional merchant shipping and offshore mineral extraction activities. In so doing, it further recognizes the paramount interest of each coastal nation in controlling activities occurring off their coasts.

As I indicated, Mr. Speaker, various claims have been made about this legislation during our committee's deliberations. For example, it has been alleged that this bill denies foreign nations' citizens the right to sue in U.S. courts; that the bill denies foreign seamen of their Jones Act remedies; that it is carefully crafted to shield U.S. companies from potential liability for any and all offshore accidents; that it denies foreign workers operating on our own Outer Continental Shelf or U.S. workers employed anywhere overseas the rights and remedies afforded

under the 1920 legislation and court interpretations thereof. Nothing is, in fact, further from the truth. Mr. Speaker, allow me to elaborate.

This bill does provide clear choice of law guidance to U.S. courts confronted with litigation arising from accidents in foreign offshore areas.

This bill does maintain the full range of U.S. Jones Act protections U.S. courts currently afford U.S. citizens employed on both traditional merchant marine vessels and special purpose vessels engaged in exploration, development, or production of offshore mineral and energy resources, no matter where they are located.

This bill does maintain the full range of U.S. Jones Act protections U.S. courts currently afford foreign seamen employed on traditional merchant marine vessels, no matter where they are located.

This bill does maintain the full range of U.S. Jones Act protections U.S. courts currently afford foreign citizens employed on special purpose vessels engaged in exploration, development, or production of mineral and energy resources on the U.S. Outer Continental Shelf.

This bill does not deny a remedy to foreign workers employed on special purpose vessels engaged in the exploration, development, or production of mineral or energy resources on the Outer Continental Shelves of foreign nations. It does, however, require such foreign citizens to first pursue their remedies in either the country off whose coast they are working or whether they are a citizen. If no remedy exists in either forum, they may pursue Jones Act actions in U.S. courts.

This bill does not shield U.S. companies from litigation in the courts of the foreign country off whose coast they are operating. It is standard practice for all such companies to sumit [sic] themselves to the legal procedures of such countries in return for the granted offshore concession.

Finally, this billing no way indicates a congressional preference for the hiring of foreign, over domestic, workers in foreign offshore areas. It is designed to make American companies more competitive in the world market and in that sense is compatible with recent congressional actions such as the reform of the income tax levied on Americans working abroad, all designed to increase the number of U.S. workers overseas.

As a further indication of this last point, I think the Members should be aware that this legislation expands current legal requirements as to both the percent of the total crew and length of time after departure that U.S. vessels leaving U.S. ports for foreign offshore areas must maintain U.S. citizen crews.

In concluding, Mr. Speaker, I believe that this is sensible and proper legislation. I believe it is in our best national interest to pass this bill and send it to the other body with the strongest recommendation for their concurrence.

Mr. BIAGGI. Mr. Speaker, I yield 3 minutes to the gentleman from Wisconsin (Mr. Zablocki).

Mr. ZABLOCKI. Mr. Speaker, I thank the gentleman for yielding time to me.

Mr. Speaker, I rise in opposition to H.R. 4863, as amended, concerning the maritime torts law modifications.

This legislation, if enacted, would have a severely detrimental impact on the American worker and on U.S. bilateral and multilateral treaty obligations.

By limiting the ability of foreign seamen employed on U.S.-flag vessels and oil production platforms to sue in U.S. courts as a result of on-the-job injury or loss, the bill encourages ship and oil production platform owners to employ only foreign nationals, thus avoiding lawsuits concerning work-related injuries which could occur if American workers were involved.

Moreover, the legislation, in its present form, not only would be disadvantageous to American workers, but it would also further separate the rights of American workers from those of their foreign counterparts, thereby creating an underclass of foreign workers on American-owned vessels. Furthermore, the legislation could encourage negligence and inadequate safety standards on those vessels. Such discriminatory tactics could well lead to retaliation against American workers abroad, ultimately resulting in fewer jobs for Americans in the offshore exploration industry around the world.

Further, the Department of State has expressed its opposition to this legislation on the grounds that its enactment could lead to claims by countries with which the United States has treaties of friendship, commerce, and navigation that we are not living up to our commitments under those treaties.

At the conclusion of my statement, I will include my communication to the Speaker on this issue as well as the text of the State Department position on the matter.

In sum, Mr. Speaker, H.R. 4863 is a bad bill. Its purpose is to serve a narrow special interest group at the expense of the American worker, foreign laborers, and, potentially, at the expense of U.S. foreign policy interests abroad. I urge the defeat of the bill.

COMMITTEE ON FOREIGN AFFAIRS,

Washington, D.C., September 16, 1982. Hon. THOMAS P. O'NEILL, Jr.,

The Speaker, House of Representatives, H-204, the Capitol, Washington, D.C.

DEAR MR. SPEAKER: I am writing to request that H.R. 4863, to modify the maritime laws applicable to the recovery of damages by certain foreign seamen, as amended by the Committee on Merchant Marine and Fisheries, be sequentially referred to the Committee on Foreign Affairs.

As ordered reported, the bill would severely limit the rights of foreign seamen employed on U.S.-flag vessels and oil production platforms to file suit in U.S. courts to recover expenses resulting from injury or other damages incurred while so employed.

Such a provision involves issues which clearly fall under the jurisdiction of the Committee on Foreign Affairs pursuant to Clause 1(i) of Rule X of the Rules of the House.

First, enactment of this legislation in its present form very well may put the United States in violation of obligations it has undertaken in several bilateral and multilateral treaties with other countries. With respect to the bill's impact on such treaties, I am enclosing a letter from the Department of State which cites the potential impact of this legislation on certain treaties, and a copy of excerpts from a multilateral convention on shipowner's liabilities.

Second, in the event that this legislation is enacted in its present form, it will discriminate directly against citizens of foreign countries, an action which would have a direct impact on our relations with other countries, and which could result in retaliatory actions against U.S. business interests abroad. These are matters within this Committee's jurisdiction under Clauses 1(i) (1) and (8).

As precedent for referral to the Foreign Affairs Committee of legislation which would be violative of U.S. treaty obligations, I refer you to the sequential referral of H.R. 11942 to this Committee in the 95th Congress. H.R. 11942, which involved the application of the U.S. antitrust laws, is very similar to H.R. 4863 in that the issue was discrimination against foreign parties who desired to bring lawsuits in U.S. courts. A principal justification for that referral was that enactment of that legislation "would violate U.S. treaties and agreements with a number of foreign nations." (See attached letter from Chairman Morgan.) It is significant that the treaty provisions which were the basis for referral in that case are the same types of nondiscrimination provisions as is the case with regard to H.R. 4863. I believe that precedent is directly on point in this case.

According to Hinds' Precedents (IV, 4170-4178), the Committee on Foreign Affairs has on several occasions exercised jurisdiction over legislation relating to U.S. rights and obligations under treaties. In addition, according to the report of the Select Committee on Committees (the "Bolling Committee") on the Committee Reform Amendments of 1974, "international agreements not presently within the jurisdiction of another standing committee are included . . . as part of the general foreign policy jurisdiction" of the Committee on Foreign Affairs.

Thus, it is clearly established that legislation which would directly violate U.S. rights and obligations established by treaty or other international agreements falls under the jurisdiction of the Committee on Foreign Affairs for purposes of consideration of those violations.

Thank you for you consideration of this matter.

With best wishes, I am.

Sincerely yours,
CLEMENT J. ZABLOCKI,
Chairman.

DEPARTMENT OF STATE,
Washington, D.C., June 8, 1982.

Hon. WALTER B. JONES,

Chairman, Committee on Merchant Marine and Fisheries, House of Representatives.

DEAR MR. CHAIRMAN: In response to your letter of November 2, the Department of State has reservations

concerning the advisability of enacting H.R. 4863. Enactment of this legislation could lead to claims by countries with which the United States has treaties, of friendship, commerce and navigation that the United States is not living up to its commitments under those treaties.

U.S. treaties of friendship, commerce and navigation typically require both parties to accord to nationals and companies of either party "national treatment and most-favored-nation treatment with respect to access to the courts of justice and to administrative tribunals and agencies within the territories of the other Party, in all degrees of jurisdiction, both in pursuit and in defense of their rights." *E.g.*, Treaty of Friendship, Commerce and Navigation between the United States and Japan ["US Japanese Treaty"], April 2, 1953, Art. IV(1), 4 U.S.T. 2063, T.I.A.S. No. 2863. *See also* Treaty of Friendship, Commerce and Navigation between the United States and the Federal Republic of Germany ["US German Treaty"], Oct. 29, 1954, Art. VI(1), 7 U.S.T. 1839, T.I.A.S. No. 3593 (which accords national treatment, but not most-favored-nation treatment). "National treatment" is typically defined as treatment "upon terms no less favorable than the treatment accorded . . . in like situations, to nationals, companies, products, vessels or other objects . . . of such Party." *E.g.*, US-Japanese Treaty, Art. XXII(1); US-German Treaty, Art. XXV(1).

The provisions of H.R. 4863, although carefully limiting the circumstances and manner in which nonresident aliens are treated less favorably than US citizens and resident aliens, could nonetheless give rise to claims by US treaty partners that the United States is not providing the national treatment in terms of access to U.S. courts

generally required by our treaties of friendship, commerce and navigation. It is also conceivable that enactment of H.R. 4863 would lead to a limited retaliation against the ability of US nations to bring actions seeking recovery for the injury or death of a US seaman in the courts of our treaty partners, especially in situations where the U.S. seaman is engaged in the exploration, development, or production of offshore mineral or energy resources.

For the above reasons, the Department of State cannot support the enactment of this piece of legislation.

The Office of Management and Budget advises that from the standpoint of the administration's program there is no objection to the submission of this report.

With cordial regards.

Sincerely,

POWELL A. MOORE.
Assistant Secretary for
Congressional Relations.

MR. BIAGGI. Mr. Speaker, I yield 3 minutes to the gentleman from Kentucky (MR. HUBBARD).

Mr. HUBBARD. Mr. Speaker, as chairman of the Panama Canal/Outer Continental Shelf Subcommittee of the House Merchant Marine and Fisheries Committee, I am very aware of the importance of the U.S. offshore service industry. This industry, which provides drilling services, transportation services, construction services, diving services, and other services to companies seeking

oil and gas offshore, is a young industry. This industry did not really mature until the 1960's, and is still on the edge of new ocean technology.

On the other hand, our maritime tort laws were enacted between 1915 and 1920, long before the offshore service industry was born. These laws, in their present form, are not able to adequately clarify when a foreign offshore oil and gas worker may seek a remedy in U.S. courts for personal injuries sustained in a work-related accident occurring over the continental shelf of a foreign nation.

H.R. 4863 would provide the needed clarification by establishing that such a foreign worker may not seek a remedy in a U.S. court for personal injury arising overseas if he has a remedy available in his home nation, or in the nation with jurisdiction over the accident site.

H.R. 4863 also has a provision creating new job opportunities for U.S. seamen on U.S. offshore service vessels while they are on a foreign voyage.

The legislation has been carefully reviewed by the Merchant Marine Subcommittee since 1980, and particularly since 1981 under the chairmanship of MARIO BIAGGI. I commend the gentleman from New York for the fairness that he has given to all views on this legislation.

I am a cosponsor of this bill and ask my colleagues to vote for H.R. 4863.

It is timely and needed legislation.

Mr. BIAGGI. Mr. Speaker, I yield 2 minutes to the gentleman from Michigan (Mr. CROCKETT).

Mr. CROCKETT. I thank the gentleman for yielding this time to me. Mr. Speaker, I rise today to oppose the maritime torts legislation, H.R. 4863, which is before us on the Suspension Calendar, and which would modify the maritime laws applicable to the recovery of damages by certain foreign seamen.

I do not believe this bill has been given the careful consideration it needs; nor has it been reviewed by the Foreign Affairs or Judiciary Committees, both of which have jurisdiction over areas touched by this legislation. In fact, Chairman ZABLOCKI of the Foreign Affairs Committee requested sequential jurisdiction over the bill, but his request was apparently denied by the Parliamentarian.

As reported by the Merchant Marine and Fisheries Committee, this legislation would severely limit the rights of foreign seamen employed on U.S.-flag vessels and oil production facilities to file suit in U.S. courts to recover damages for injuries suffered while so employed.

Such changes in the treatment of foreign nationals should, I believe, be studied by the Foreign Affairs Committee. Enactment of this legislation in its present form could put the United States in violation of bilateral and multilateral treaties concerning the treatment of foreign workers. In addition, the discriminatory treatment of foreign workers in this bill could lead to retaliatory measures being taken against American workers in other countries, or against American business operating abroad.

The Department of State, from which comment was requested by the Merchant Marine Committee, relied

unfavorably on the legislation, saying that it would violate treaties of friendship, commerce, and navigation.

The bill would also have an impact on the scope of jurisdiction of U.S. courts, restricting the access to those courts by foreign workers. It would seem to me that such a restriction of the courts' jurisdiction should be examined by the Judiciary Committee before this House votes on it.

Mr. Speaker, I oppose this bill not only because I do not believe it has been given full consideration; I also oppose it on the contents of the legislation itself.

Under current law, a foreign worker injured while employed on a U.S.-flag vessel or oil production facility has access to U.S. courts, but only after a careful review of the circumstances surrounding the injury. Standing before the courts is decided on a case-by-case basis, giving the courts the flexibility to determine culpability. Foreign seamen injured while working on U.S. rigs must clear a number of hurdles before their cases are heard, and the courts consider factors such as the place of the wrongful act, the law of the flag, the allegiance or domicile of the injured seaman, the allegiance of the shipowner, the place of the contract, the inaccessibility of a foreign court and the law of the forum before allowing an injured party to proceed.

This bill would disallow any review, and would cut foreign workers off from this avenue of redress.

If this legislation is passed, Mr. Speaker, the oil conglomerates will have won another battle against the

rights of American labor and its efforts to maximize safety on U.S. vessels and oil rigs.

Given the choice between hiring an American worker, who if injured would still have access to sue under U.S. courts, or a foreign-born worker, who could not sue for damages, an oil company would undoubtedly choose the latter as the more profitable decision. The number of U.S. workers on rigs would diminish, while profits for the oil companies would rise.

Additionally, with diminished liability toward foreign workers, the pressure for safety standards will be lessened on the vessels and rigs, making an already dangerous profession even more so.

Mr. Speaker, I urge my colleagues to carefully reflect on what this bill would do to American workers, to our court system and to our foreign relations, and I urge you to reject it until such time as it receives the full review and study needed to insure that justice is served.

MR. SNYDER. Mr. Speaker, I yield 2 minutes to the gentleman from New York (Mr. LENT).

Mr. LENT. I thank the gentleman for yielding this time to me.

Mr. Speaker, I want to commend both the gentleman from New York (Mr. BIAGGI) and the gentleman from Kentucky (Mr. SNYDER) for their leadership in connection with H.R. 4863, to modify U.S. maritime tort laws.

As an original cosponsor of H.R. 4863, I urge its adoption by the House.

Three days of committee hearings over the past 3 years have established the need for this legislation. Without this legislation, U.S. offshore service companies will continue to be plagued by numerous lawsuits brought in U.S. courts by foreign offshore oil and gas workers. These workers bring these lawsuits to obtain U.S. remedies for personal injuries which arise from work-related incidents occurring over the continental shelf of a foreign nation. Presently, 200 such lawsuits are pending in the U.S. courts, and they seek over $2 billion in damages. Our hearings established in every instance remedies are available to these plaintiffs overseas.

With this legislation enacted into law foreign offshore oil and gas workers would have to show that they had no remedy overseas before seeking a U.S. remedy under U.S. maritime tort laws. This would be an equitable system that allows each nation to provide a remedy for its citizens, or to those working within its jurisdiction.

Passage of this legislation is important, and I urge a yes vote on H.R. 4863.

Mr. SNYDER. Mr. Speaker, I yield 2 minutes to the gentleman from Louisiana (Mr. LIVINGSTON).

Mr. LIVINGSTON. I thank the gentleman for yielding this time to me.

Mr. Speaker, U.S. offshore service companies have been plagued in recent years by lawsuits brought by foreign offshore oil and gas workers seeking U.S. remedies for injuries arising from work-related incidents occurring overseas. In every instance, these workers have

remedies in their home nations, or in the nations where they work.

At this time there are about 200 such lawsuits pending in U.S. courts seeking over $2 billion in damages. This is more than double the number of suits that were pending in 1980.

Other nations do not allow their work-related compensation laws and judicial systems to be used by noncitizens for incidents occurring beyond their jurisdiction. Hence U.S. offshore service companies have been saddled with the costs resulting from these lawsuits while their foreign offshore competitors have not had to bear such costs. Thus, the U.S. companies are at a competitive disadvantage.

I am proud to be a cosponsor of H.R. 4863 which clarifies U.S. maritime tort laws by establishing how U.S. court should apply these laws to foreign offshore oil and gas workers. The clarification is that a foreign offshore oil and gas worker may not obtain a U.S. remedy for a work-related incident occurring over the Continental Shelf of a foreign nation if a remedy is available to the foreign worker in his home nation, or in the nation with jurisdiction over the accident site, if different. If there is no remedy available in either of the nations, then the foreign worker may seek a remedy in the United States.

H.R. 4863 does not affect U.S. workers no matter where in the world they are working, or United States or foreign seamen on traditional blue-water vessels, or any person, regardless of nationality, working over the U.S. Continental Shelf.

H.R. 4863 insures that a remedy is available for every offshore worker, no matter where he may work, or his nationality. It does so by allowing the nation with the greatest interest in the worker's welfare to provide him with compensation for a work-related injury.

I strongly support H.R. 4863, and urge my colleagues to join me voting "aye".

Mr. SNYDER. Mr. Speaker, I yield 1 minute to the gentleman from Mississippi (Mr. LOTT).

Mr. LOTT. I thank the gentleman for yielding this time to me.

Mr. Speaker, in recent weeks I have had brought to my attention a problem faced by U.S. offshore service companies. The problem is that they are being subjected to numerous lawsuits by foreign offshore oil and gas workers seeking remedies under U.S law for injuries sustained overseas. In every instance, these workers have remedies overseas.

H.R. 4863 would correct the problem by prohibiting these foreign offshore oil and gas workers from seeking U.S remedies for injuries sustained overseas unless they can show that they have no remedy overseas.

It makes sense that every worker seeks his compensation for a work-related injury in the nation with the most interest in his welfare.

H.R. 4863 establishes such a system, and I ask for the passage of H.R. 4863.

Mr. BIAGGI. Mr. Speaker, I yield such time as she may consume to the gentlewoman from Louisiana (Mrs. BOGGS).

Mrs. BOGGS. I thank the gentleman for yielding to me.

Mr. Speaker. I rise in support of H.R. 4863 and I commend the members of the committee for their diligence in bringing this important legislation to the floor today.

I believe this legislation is important to the economic health of our offshore service industry. As many of my colleagues know, a number of offshore service companies are based in the New Orleans area. These companies operate throughout the world, in the Middle East, off the coasts of Nigeria, Mexico, and Indonesia, in Prudhoe Bay, Alaska, and in the North Sea, just to name some of the major areas.

In recent years some of these companies have been plagued by numerous lawsuits filed by foreign offshore oil and gas workers for injuries occurring over the Continental Shelf of foreign nations for which remedies are available overseas. This has proved to be very costly to these companies and to the world energy effort.

U.S. offshore service companies' costs are in the form of defending expensive lawsuits tried thousands of miles away from the place of the incident. These cases should not be tried in American courts; rather, they should be tried under the laws of the jurisdiction in which the incident occurred. This situation results in additional insurance costs since the U.S. companies also are subject

to the work-related compensation scheme where they work – that is, in the foreign country – and the cost of settling or even losing lawsuits brought in U.S. courts by foreign nationals.

Foreign companies operating in competition to our own industry are not subject to these same costs. Because they do not bear this same burden they are at a competitive advantage over U.S. industry. Unfortunately, these additional costs are pricing our companies out of the market when they bid for work overseas against foreign-owned businesses.

H.R. 4863 would eliminate the disadvantage to American firms. This is a fair bill that preserves a remedy for all workers. It would have no impact whatsoever on American workers employed by U.S. offshore service companies overseas or here in the United States. American workers would continue to have recourse to American law and foreign workers would have recourse to their own national courts or compensation systems. In the interest of fairness the bill permits foreign workers injured overseas to seek a U.S. remedy if he simply shows he has no remedy overseas and if he established the proper legal points of contact in a U.S. court.

Mr. Speaker, this is a very limited modification of maritime tort law. As my colleague from Louisiana has said it would have no impact on U.S. workers, on "blue water" seamen, or any person – no matter what his or her nationality – working over the U.S. Continental Shelf. It simple [sic] remedies a "loophole" in existing law which

puts American companies at a severe disadvantage worldwide. It is a reasonable and needed bill and I support its passage.

Mr. BIAGGI. Mr. Speaker, I yield 2 minutes to the gentleman from Louisiana (Mr. TAUZIN).

Mr. TAUZIN. I thank the gentleman for yielding this time to me.

Mr. Speaker, many of the major U.S. offshore service companies are located in my congressional district. So there are many people in my district working for these companies all over the world.

Over the past 3 years, it has come to my attention that these U.S. companies are at a competitive disadvantage with foreign-owned offshore service companies because present U.S. maritime tort laws need clarifying. The needed clarification is to establish when a foreign employee of a U.S. company or its foreign subsidiary may obtain a remedy under U.S. maritime tort laws. Until the clarification is made, U.S. offshore service companies will have more compensation and insurance costs than foreign-owned offshore companies.

H.R. 4863 would make the clarification by establishing that the foreign employee may not obtain a remedy under U.S. laws for an injury sustained in a work-related incident which occurred overseas for which a remedy is available overseas. H.R. 4863 would not affect U.S. maritime laws as they may be applied to any U.S. worker, any seaman on a blue-water vessel, or anyone working over the U.S Continental Shelf.

During the discussions on this bill in Committee, the question was raised.

"Why do U.S. companies hire foreign employees overseas?" The answer is simple in that most nations require by law, or encourage, only its nationals to be employed over their continental shelf. The same policy is reflected in our own visa and immigration laws, and in our OCS laws. We cannot expect other nations to be different.

At the same time, our judicial policy toward foreigners injured thousands of miles from the United States in an offshore oil and gas field should be in conformity with the national practices of the foreign competitors of U.S. companies.

Since other nations do not allow foreign citizens to obtain remedies for injuries sustained within the jurisdiction of foreign nations when remedies are available elsewhere, the United States should do likewise. Only under this system may U.S. offshore service companies compete equally with foreign-owned offshore service companies.

In short, H.R. 4863 will help U.S. businesses and their employees.

I ask for a "yes" vote on H.R. 4863.

Mr. SNYDER. Mr. Speaker, it is with reluctance that I yield time to a Member who has left our committee for perhaps a greater love, but I yield 1 minute to the gentleman from Florida (Mr. SHAW).

Mr. SHAW. Mr. Speaker, it is with greater reluctance that I have to compliment the ranking member of the Subcommittee on Merchant Marine of the Committee on

Merchant Marine and Fisheries, but I certainly, with a great deal of enthusiasm, would compliment the entire committee for, I think, undoing what was an injustice in the past.

We seem to have masochistic tendencies, in dealing with ourselves. In going through this bill, as I was on the committee when the bill was marked up, one begins to wonder how the law ever got to be otherwise than is stated in this bill.

I enthusiastically support this bill and again would like to compliment all the people who worked so hard to bring it to us.

Mr. BIAGGI. Mr. Speaker, I yield myself the balance of my time.

I think for the record certain things should be clear: Neither the Department of State nor the administration oppose the bill.

My concerns for the laboring elements in this area have been clearly manifested because what this bill includes, which the law has not included heretofore, is an increase from 75 percent of American personnel leaving the United States to 100 percent. Also, they could not be replaced for 30 days. Heretofore they could have been replaced any time the employer desired to do so.

But let us look at one important fact: What we are dealing with is an abuse that has been precipitated by an international network of attorneys and their field operators.

We had evidence during the hearings that representatives of attorneys from the States were up in Canada after

the fatal Ranger accident, knocking on the doors of Canadians in ambulance chasing fashion. They were appalled at the approach. They were not aware of what was happening, that it never happened to them before.

That is clearly one illustration of the abuse we intend to correct. They go to these foreign lands, sign up the client, and say, "Sue in America. American courts are very generous with their awards. You can return home and live in wealth for the rest of your life."

That clearly is an abuse. But in the process of trying to deal with the abuse, we do not deny any victim of an injury the right to come to these United States when a U.S. company is involved, if there is no remedy, no compensation provided in their lands for injuries occurring in the foreign waters – the Outer Continental Shelf.

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As another factor, many of these foreign countries mandate that the American companies have a certain percentage of their employees as foreign nationals. Members can see the inconsistency of those who are critical. If they are going to mandate it, why not make the courts in those countries available for any injury incurred by a foreign national?

Clearly, this legislation has been given extensive hearings, a very considerable record, and we addressed ourselves to the concerns of the laboring segment in our Nation. No one has greater sympathy for them than I, and yet there was not a scintilla of evidence. We asked them time and time again, "Give us that evidence; show

us something where this will bring about a negative reaction."

They have failed to do that. They have said it with rhetoric, and I understand that, but my obligation is to the facts and legislating to the abuses. I tell them, "Show me something that will prove your position, and we will do something in the legislation."

They did not show it. All the arguments that this would have negative impact on labor I think is without real basis.

I urge all the Members of the House to vote for this legislation. It is thoughtful legislation. It deals with an abuse. Why should the American taxpayer, and in the end the consumer, be saddled with the cost of paying for these additional hundreds of claims?

None of the claims that are initiated now will be vitiated. This is not retroactive. There was mention here that there were some 200 claims pending in the courts. This legislation, if adopted, cannot impact on those 200 claims. Clearly, that is not the case. The law becomes effective prospectively. There are no gimmicks, no curves. It is a straight-forward approach. We know it has merit and we know it deals with an abuse that should be corrected.

I am an attorney myself, and I can tell the Members that the practice engaged in by those few law firms, just a few in this country that have an international network, might be worthy of some review.

• Mr. FIELDS. Mr. Speaker, as an original cosponsor of H.R. 4863, I am extremely pleased that we are meeting today to consider this most important legislation.

This long-overdue measure is designed to correct what I feel is an unintended application of our maritime tort laws.

Under present law, a foreign citizen who is injured while working on an oil rig located within the territorial waters of a foreign nation is encouraged to file suit in U.S. Federal courts because of the record of generous settlements.

Mr. Speaker, I do not believe that our maritime tort laws, which were enacted to protect workers employed on traditional blue water merchant vessels, were ever intended to cover the activities of these oil rig service workers.

In an effort to clarify this situation, H.R. 4863, stipulates that an injured foreign worker must first seek relief in either the court system where the accident occurred or the courts of his own nation. If the worker is unable to obtain redress in either of these court systems, then and, only then, may he utilize our court system and petition for relief. In short, this bill directs those foreign injured workers to utilize our court system as a remedy of the last resort not of the first, as is currently the case.

Let me also emphasize that this legislation will have absolutely no effect on American seamen and more importantly is not retroactive in application. Therefore, those families of workers who were regrettably killed on

the ocean ranger are not precluded from seeking relief in our court system.

Mr. Speaker, H.R. 4863, sets forth an equitable solution as to when foreign offshore oil and gas workers may seek U.S. remedies for alleged injuries which occurred overseas.

I am convinced that with the passage of this bill our offshore service companies will be able to remain strong around the world and that there will be thousands of jobs for Americans overseas.

Finally, I would like to commend the gentleman from New York (Mr. BIAGGI), for his invaluable leadership on this most important legislative issue.•

OPPOSITION TO H.R.4863

• Mr. HERTEL. Mr. Speaker, the report to accompany H.R. 4863, filed September 23, 1982, states on page 5:

The legislation requires the claimant to show that at the time the U.S. action was commenced, he had no remedy under either the laws of the nation asserting jurisdiction over the area in which the incident occurred or the nation in which the injured worker maintains citizenship or residency. A U.S. national who brings a suit as the representative or survivor of a foreign injured worker would still have to show that he (the U.S. national) lacked a remedy in the nation of citizenship or residency of the injured worker, and in the nation exercising jurisdiction over the place of injury.

This means that if a U.S. widow of a foreign injured worker would be barred from bringing a Jones Act claim

in U.S. courts unless there was no remedy in the nation of citizenship of her injured foreign spouse. This is an enormous impairment of the right of Americans. It changes the Death on the High Sea Act, the Jones Act, and the Seaman's Act of 1915.

The committee report also shows that the Department of State does not support the enactment of this piece of legislation because:

It is also conceivable that the enactment of H.R. 4863 would lead to a limited retaliation against the ability of U.S. nationals to bring action seeking recovery for injury or death of a U.S. seaman in the courts of our treaty partners, especially in situations where the U.S. seaman is engaged in the exploration, development or production of offshore mineral or energy resources.

The Department of Transportation questioned, "Whether H.R. 4863, as introduced, would encourage the displacement of U.S. seamen by foreign nationals from such employment with the U.S. mineral and oil industry." While the Department favors the general intent of the proposed legislation, it would be opposed to the use of this legislation as a vehicle to arbitrarily displace U.S. seamen from such employment. The Department of Transportation also deferred to the Department of State with respect to treaty matters.

The offshore oil industry is the most hazardous sector of employment for worker safety. Injuries and illnesses per 100 workers in 1980 for the oil and gas drilling industry was more than twice that for the remainder of the private sector. H.R. 4863 purports to address abuses

by foreign nationals in tort litigation targeted at the offshore oil industry. There are other means to protect against abuses by foreign nationals, such as double-judgments or double-dipping recoveries. Those provisions would consist of offsets in consideration of judgments. H.R. 4863 slams the doors of the Federal court on all foreign victims of drilling injuries and their survivors.

The Federal courts now possess all means necessary to reject cases by foreign seamen which are without merit. A good example is the case of *Philips v. Amoco-Trinidad Oil Company* (632 F.2d 82) 1980, which clearly delineates that foreign seamen do not have an automatic right to sue under section 688 of the Jones Act, nor does this section operate on the basis of some social welfare theory as has been suggested by proponents of the bill. As a matter of fact, the Philips court expressly rejected the notion that because injured Americans can sue, injured foreigners can do the same thing. The court was emphatic stating that:

The suggestion that one follows from another is another "variety of social jingoism" which presumes that the "liberal purposes" of American law must be exported to wherever our multinational corporations are permitted to do business –

(page 89.).

Further, at page 84:

"But the courts have never applied the Jones Act as a literal reading of what it requires." The Supreme Court has indicated that the Jones Act applies, "only to areas

and transactions in which American law would be considered operative under the prevalent doctrines of international law."

This is clearly reflected in the statistics on maritime personal injury cases filed in U.S. Federal courts. For the year ending June 30, 1982: 5,394 maritime personal injury claims were filed. In the hearings on H.R. 4863, the highest number of cases which were claimed to be filed by foreigners amounted to 106, which is less than 2 percent of that total. Estimates of claims, not judgments, were pegged at somewhere in excess of $100 million total. A simple calculation of these two figures indicates that each of these cases made claims of approximately $1 million each. It tends to be an unwritten legal practice to claim $1 million in virtually any personal injury case.

There was no testimony at the hearing that indicated any specific abuses or lack of merit in any of these 106 cases, nor a total figure of actual recoveries paid out.

It is important to understand the principles of tort law. Its most important function is to encourage safety by making it economically unadvantageous to put individuals at risk. H.R. 4863 creates a double standard of tort law for seamen on a single vessel. Not only does this change hundreds of years of maritime legal tradition, it encourages the exploitation of foreign workers because it is economically more advantageous to put these individuals at risk because, should harm come to them, the penalties will not be as great. Alternatively, this works to discourage the employment of American seamen because our laws require greater legal responsibility for our workers' safety.

H.R. 4863 is perhaps one of the coldest uses of cost-benefit analysis with respect to individuals' lives or safety. It encourages the use of individuals in the most dangerous occupation who have the least legal protections.

Finally, since this bill has been considered, there have been three oil drilling vessel disasters: the *Ocean Ranger* which sunk off the coast of Nova Scotia claiming 83 lives of the multinational crew, received wide publicity: the sinking of an oil drilling vessel off the coast of Indonesia in which several lives were lost; and this week's abandonment of an oil drilling vessel in the Bering Sea. All these disasters clearly indicate that the offshore oil industry has not suddenly become safer in recent times.

H.R. 4863 is a radical departure for American maritime jurisprudence. This bill purports to stem the increasing number of aliens filing suit in U.S. courts seeking Jones Act and other maritime remedies for injuries and deaths in offshore oil industry related accidents beyond the territorial waters of the United States.

During the last 5 years 106 such suits were brought in Texas, Louisiana, Pennsylvania, and California against seven of the most active companies in offshore oil industries abroad. Witnesses at the hearing for this bill sought to boggle the mind with stories of massive judgments and alleged ethical abuses by attorneys. The solution this bill offers is slamming the door on every hapless victim simply because they happen to be foreigners.

What does H.R. 4863 remedy? There is no member of this committee who would deny that the offshore oil industry is a difficult and dangerous undertaking. The

New Orleans Times-Picayune, Sunday, August 8, 1982, in a series of articles which illustrate the dangers in oil and gas drilling wrote that the oil and gas industry had 6.8 fatalities per 10,000 workers versus 5.9 for the coal industry and 0.84 for other sectors of the economy. Injuries and illness per 100 workers in 1980 for the oil and gas drilling industry was 19.3 versus 8.7 for the remainder of the private sector.

This bill does not address abuses of tort litigation targeted at the offshore oil industry. It grants a license to neglect the safety of workers. H.R. 4863 departs from American maritime tradition by creating a dual standard of a single vessel. American and foreign seamen suffering the same injury on the same vessel will recover radically different amounts. This can lead to two situations:

One, the foreign worker be exploited and placed in the more hazardous situation because a traditional cost-benefit analysis would dictate one should risk those personnel who resulted in less tort liability; or

Two, expanding upon the previous example. There would be little reason to hire American workers because foreign workers without the right to recover damages on an equal basis are a better value. When one is confronted with liability for injuries, H.R. 4863 is a broad statement of policy which encourages exploitation of foreign workers for the most hazardous duty and discourages employment of Americans.

Allegations of abuse of judicial process and excessive awards of money was not balanced in the subcommittee hearings by the testimony by any victims. This committee did not see the injured, and maimed, the dead, but we are

racing to stop any recovery these individuals may have. The committee was presented with ample evidence that the courts do look to the merits of injuries suffered by victims, in evaluating cases. The Congress can only set policy matters, but the court has the handicapped worker before it. The courts have and will continue to bounce cases which are frivolous or devoid of merit. They possess the requisite tools in the doctrine of "forum non conveins [sic]" to defer cases brought by aliens in U.S. courts to courts of appropriate jurisdiction.

This is the complex and difficult area, involving choice and conflicts of law which may indeed need further guidance as alleged by proponents of this bill. However, H.R. 4863 is not choice of law guidance. It is the elimination of a certain class of civil action which I believe to be beyond the jurisdiction of this committee to adequately address.

Beyond the complexities of the conflict of laws question in this issue lies a painfully difficult foreign policy question. The United States has entered into more than two dozen treaties of friendship, commerce, and navigation containing provisions for equal access to our courts on the basis of national treatment of most-favored-nation treatment.

National treatment means access to our courts by aliens of one country on terms no less favorable than the treatment accorded in like situations to U.S. citizens. Most-favored-nation treatment means access to our courts by aliens upon terms no less favorable than the treatment accorded in like situations to nationals of any third nation. Thus, the United States has pledged that it

will not adopt precisely the sort of door closing law that is found in H.R. 4863.

The United States presently has treaties of this sort with Argentina, Austria, Belgium, Bolivia, Columbia, Costa Rica, Denmark, Ethiopia, Germany, Finland, Greece, Honduras, Ireland, Israel, Japan, Korea, Liberia, Luxembourg, the Netherlands, Nicaragua, Norway, Pakistan, Paraguay, Spain, and Thailand. Congress clearly has the power to abrogate those treaties, but it would be disruptive to our friendly relations with these countries to do so. What will be the international perception of the United States moving to deny legal redress to the injured and dead who have suffered as a result of our industrial efforts. It is horribly ironic that each time this bill has been scheduled for hearing or markup it has been proceeded by tragic disasters for offshore drilling vessels. It is almost as if a higher authority were telling us – no.•

• Mr. DERWINSKI. Mr. Speaker, I rise in support of this measure providing for a limited change in U.S. maritime tort laws.

Currently, these laws give inadequate guidance as to whether a foreign oil and gas worker may seek a remedy in a U.S. court for injuries sustained in a work-related accident over the continental shelf of a foreign nation. If H.R. 4863 is enacted, such a foreign worker would not be able to obtain a remedy in U.S. courts if he had a remedy available in his home nation, or in the nation with jurisdiction over the accident site, if different. If he had no remedy overseas, he then may seek a remedy under U.S. law.

This legislation would not affect the right to sue in U.S. courts of any U.S. citizen or permanent U.S. resident alien working overseas; any seaman on a blue water vessel; or anyone working over the U.S. Continental Shelf.

Mr. Speaker, I believe this bill is needed to put U.S. offshore companies and their workers on an even basis with foreign-owned offshore companies in terms of the costs of work-related compensation and insurance.

The bill's manning provisions were deliberately added in committee to insure that American jobs would not be lost and that safety standards would not be lowered as a result of the enactment of this legislation.

Mr. Speaker, I urge my colleagues' support of H.R. 4863.•

• Mr. HUTTO. Mr. Speaker, H.R. 4863 would establish that a foreign offshore oil and gas worker may not obtain a U.S. remedy for an injury sustained in a work-related incident over the continental shelf of a foreign nation if he has a remedy in his home nation, or in the nation with jurisdiction over the incident site.

This is a fair approach, and it is certainly better than the present application of U.S. law to these foreign offshore oil and gas workers. Presently there is great uncertainty as to when U.S. maritime tort laws are applicable to foreign offshore oil and gas workers. H.R. 4863 would end the confusion.

As an original cosponsor of H.R. 4863, I urge its adoption.

I commend the gentleman from North Carolina, Mr. JONES, and the gentleman from New York, Mr. BIAGGI, for bring this needed legislation to the floor of the House.•

Mr. SNYDER. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. All time has expired.

The question is on the motion offered by the gentleman from New York (Mr. BIAGGI) that the House suspend the rules and pass the bill. H.R. 4863, as amended.

The question was taken.

Mr. ZABLOCKI. Mr. Speaker. I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Pursuant to clause 5, rule I, and the Chair's prior announcement, further proceedings on this motion will be postponed.

The point of order of no quorum is considered withdrawn.